• Why liberals should hate the insanity defense

• Why Pat Moynihan is no longer a neo-conservative

The Washington Monthly

May 1984 • $2

The Case Against Privacy

What we give up when we mind our own business

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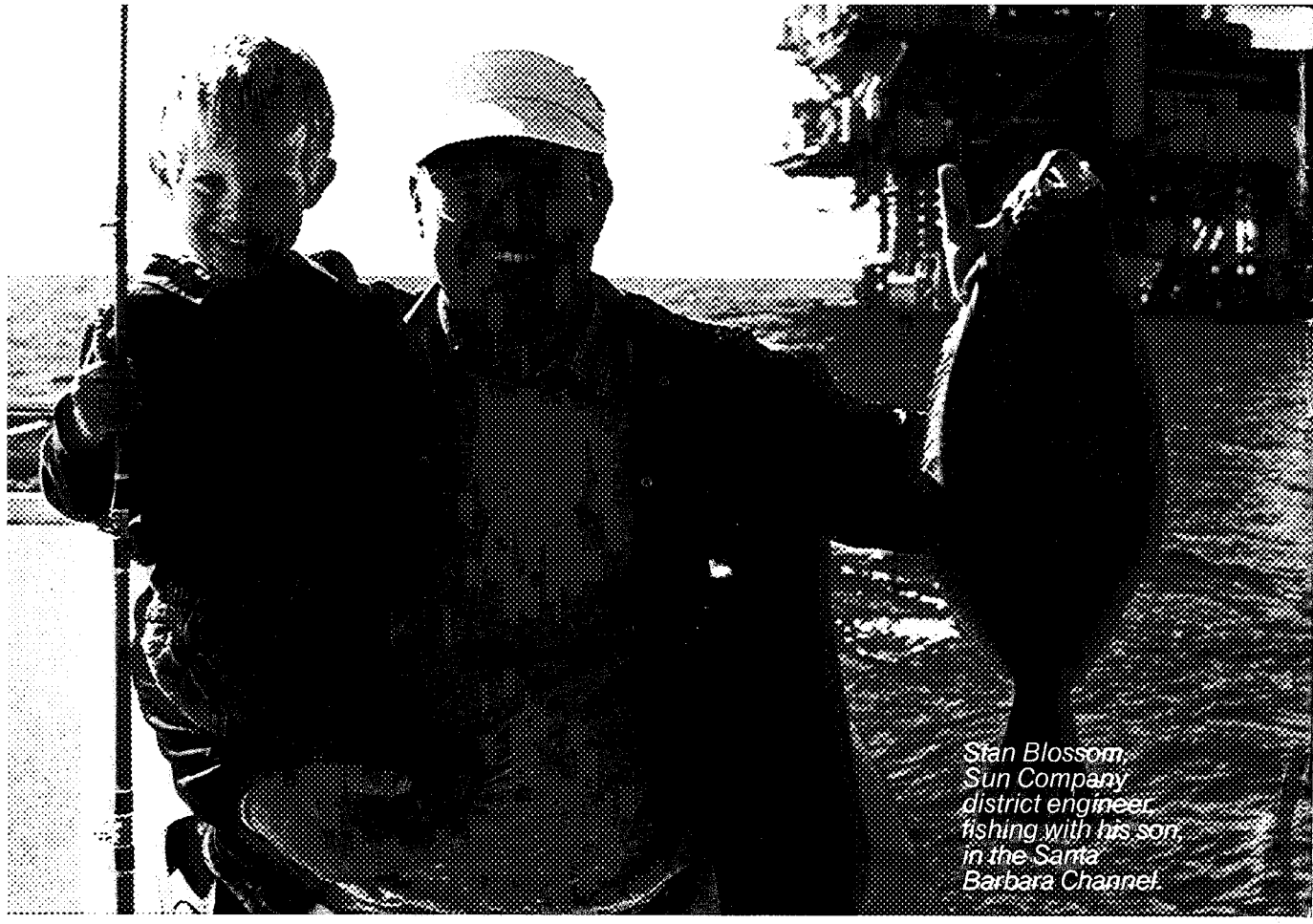

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Alfred Kazin on Updike

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The New York Review of Books

Felix Rohatyn: Playing Russian Roulette with the U.S. Economy

Stephen Jay Gould: A Super Scientist

Wilde at Oxford

Anniversary Issue

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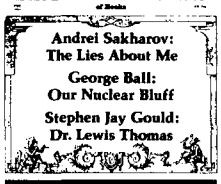

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George Ball: Our Nuclear Bluff

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Pritchett on Proust
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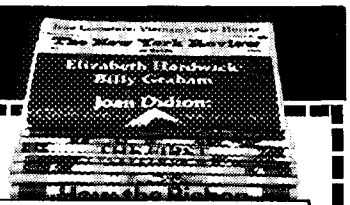

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LETTERS

Digital Alarm

In an otherwise insightful review of *In Search of Excellence* ["Economics Without Numbers," March], Phillip Keisling made a conspicuous slip. He writes, "One wishes the authors had given the important question of worker ownership more attention."

This may be an important question but Mr. Keisling missed something of the essence of the book which is neatly summarized by its title. First, the main title is not *In Search of a Collectivist* (or a *Socialist* or *Communist*) *Ideal* but one fundamentally and irreconcilably different. Second, the subtitle is *Lessons from America's Best-Run Companies*. None of the best-run companies (nor probably the next 1,000 runners up) is worker-owned.

There is nothing in theory or practice that implies worker ownership results in an exceptionally well-run company. In the context of the analyses and objectives of the book, the authors gave the subject the attention it warrants.

FREDERICK W. MOSSER
Bethesda, Maryland

In his haste to unload quantitative analysis, Phillip Keisling is falling into the same mind trap that has caught those he criticizes: ignoring an important part of the full spectrum of information which a manager should have before making decisions. True, quantitative models used blindly are dangerous and often plain wrong. True, models rarely can take into account complex realities like human behavior. But managing the economy or a business "without numbers" is equally as silly as running things only on the basis of equations.

The best quantitative analysts I have run across, in government and in business, are quick to recognize the limitations of their models. Any one of them worth his or her salt will tell you where the conclusions and methods are weak.

But mathematical models present vast amounts of information in rational, understandable form. They serve as good tests of intuition and personal observations, just as instinct and experience should temper judgments about what the numbers show. Good managers need the strength of both types of information.

L. DAVID TAYLOR
Alexandria, Virginia

Disabled Democracy

Your article in the March issue on workers' compensation ["Adding Insult to Injury," Teresa Riordan] touched the surface of the problem. By treating the story as another case of "rich lawyers get richer while some others suffer" you obscured the total abdication of authority by the agencies nominally responsible for administering workers' compensation and protecting public health.

In my ten years of involvement as a researcher, organizer, adviser, neighbor, and victim in the occupational health movement, I was often angered by the performance of lawyers and doctors, but was never surprised. They guarded their self-interest and behaved for pay, an all American virtue. Similarly, while disappointed to see "honorable" state legislators and the U.S. Congress being led by the noses by insurance and Chamber of Commerce lobbyists, I expected their behavior and prepared for it.

Public health officials and industrial commissioners (who sit on workers' compensation boards) on the other hand are paid by the public. Why have they behaved so uniformly and disgracefully? Why have public health officials ducked all responsibility for what goes on within workplace walls, deferring to EPA or OSHA, and then avoiding any information actually pried out of those agencies? Why have the industrial commissions, faced with the parade of broke and broken workers, puffed themselves up into quasi-judges, pretending quasi-decorum, and demanding quasi-legalisms? Why have genuinely conservative political thinkers supported public handouts rather than insist that industries be required to pay this most direct cost of doing business? Why have these public officials utterly failed the public interest for no personal financial gain?

It is not enough to say that they are stupid. Or venal. Or corrupt.

Certainly their social aspirations make them wish they could be closer to the prosperous defense lawyers than to the victims. Certainly they wish to deny the ugly reality of lingering occupational diseases, chemically induced cancers, excruciating disabilities. Certainly they want to go home to their families to live a "normal" life.

Primarily, however, they get away with their neglect because no one expects them to do a better job. Very early in the brown lung movement in a meeting between disabled cotton mill workers and the chairman of the South Carolina Industrial Commission, folks planned to ask three questions:

1) Is it your job to help workers injured on the job? (yes)

2) Is it true that there are 25,000 cotton mill workers in South Carolina disabled by exposure to cotton dust? (yes)

3) Is it true that NO worker in South Carolina has ever gotten compensation for brown lung disease under South Carolina worker's compensation? (yes)

Ollie Boykin, an active worker (who would die within three years of brown lung disease) who had not wanted to speak, but who had wanted to come to the meeting to watch and learn was moved to speak up. "Sir," he

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said, speaking from the back of the room, "I have a question. I just can't figure it out. You say your job is to help people and you haven't helped a one. How do you keep your job? If I did my job in the mills the way you do your job down here, I'd be fired in a week!"

It's true. If most bureaucrats were held to the lowest standards of production workers, they'd be gone in a week. But the subject is messy and boring. Even "60 Minutes" had a hard time making an exciting story out of the brown lung tragedy. So writers prefer to harp on the crimes of the trial lawyers, or very rarely to air the disgraceful behavior of the defense bar in compensation cases. But the public health officials and the industrial commissions get off free and anonymous.

FRANK BLECHMAN
St. Louis, Missouri

Waiting Intern

You are on target pointing out Ann Landers's poor excuse justifying the ridiculous hours worked by interns and residents in this country. Having just completed a residency at a university medical center, I cannot tell you how many times I have heard, "Oh, you'll make a lot of money some day." Frighteningly enough, such comments often come from persons my own age, and not from people of Ms. Landers's generation.

The plain truth is that interns and residents do routine medical work without having slept for 34 to 36 hours. Of course they do not perform open heart surgery, but they do procedures like C-sections and appendectomies. Those receiving these services are members of what a former professor of mine called the "unsuspecting public." They are not the Reagan suburban crowd with tax-free Blue Cross benefits. They are the unlucky Medicaid recipients who Mr. Reagan thinks drive Cadillacs but who, in reality, have no access to physicians in private practice. They often have no recourse but the county hospital. They are as stuck as the interns who actually provide subminimum-wage labor to these institutions.

How can this system change? Talk with older physicians and you will find that they did have it worse. They have paid their dues. As a result, department chairmen can easily spend more time placating faculty members than worrying about the health of their residents, let alone the daily problems of the patients who justify hefty department budgets.

So long as equal access to medical providers does not exist, the system will not change. (Remember a large percentage of private physicians do not accept Medicaid patients.) Even if senior faculty members pulled night call at the intern level and attained a more heightened level of awareness, they would be bureaucratically impotent to implement change. Budgetary constraints are increasing. As grant monies dry up, departments are forced to reduce intern and resident positions. At the same time, the number of patients being seen at public facilities has increased in the past two years. The arithmetic is clear. Fewer physicians in training are left to do more work.

We are producing a new era of physicians who I had hoped would be a long-term catalyst for changes in this most traditional of professions. Yet the educational system and an ever-shrinking economic pie create attitudes that are ever more self-serving. What's a neoliberal to do?

TIM PETERSON
Cuba, New Mexico

Taken for Granite

In your monthly "Tilting" column you impose a high standard of consistency on tiltees. It is disappointing to see you use numbers in the March issue in a way you might describe as a cheap shot under other circumstances. I am referring to your comparison of the District of Columbia and South Dakota school systems.

The rate of graduation is indeed a significant statistic. A South Dakota school student does have a 25 percent better chance of graduation. But the salary schedule for teachers would suggest that the Washington, D.C., teachers make less in real terms than their South Dakota colleagues. The South Dakota consumer price index is only 55 percent of the District of Columbia's. Applying this, Dakota teachers are more highly paid than those in D.C.

My candidate for achievement in this area is New Hampshire. They pay their teachers less than South Dakota does. They rank 27th in per-pupil spending. And yet they lead the nation in SAT scores and are in the top ten in high school graduation rates.

Maybe they really deserve all that attention we politicians pay them every four years.

ROBERT J. KEEFE
Washington, D.C.

Getting Fad Press

Timothy Noah seems to have the same romanticized notions about the sixties that Bob Dylan has about Woody Guthrie ["The Big Massage," February]. Human nature didn't take some giant leap towards real altruism in the sixties but the people who were preaching it did get a lot of press. This press led to the misconception that something was afoot. Nothing could have been further from the truth.

BILL PATRICK
Austin, Texas

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Timothy Noah's generation feels left out and is developing a rapid inferiority complex as a consequence. I will no more be blamed for the fact that he wasn't there when I got maced in 1969 than he should be. There was a Mighty Sound, Mr. Noah, and we all saw the elephant and never were the same. More to the point, there is an old Chinese curse, "May you live in interesting times!" Are we actually expected to be contrite because it was laid upon us and not upon our younger brothers? This is double jeopardy!

May I propose a truce between Mr. Noah's generation and mine? Someone's going to have to look after us in our premature senility. If they are as straight as they're stereotyped to be, they'll be just right for the job.

JOHN PERRY BARLOW
Cora, Wyoming

Timothy Noah revealed the real difference between the sixties generation and his own without realizing it when he chose to center his story around movies.

It's the visual media that created the greatest generational differences. The sixties generation (those not suckled on TV) was no better than any other generation; they just remembered growing up in a world where politics was associated with morality rather than makeup, and they were outraged.

That they now seem complacent, self-centered, hedonistic, is really only raised eyebrows caused by eye fatigue accompanying the hypnotic disbelief of so much pap.

MITCHELL ZUCKER
Mendocino, California

'Tis Pity She's So Poor

I was appalled you found it admirable that Joan Burton, deputy clerk of Chase County, Kansas, refused to accept a pay raise because she didn't believe the rural county could afford it ("Tilting at Windmills," March).

Women have been programmed for generations to believe that the work they do is not worthwhile. Women have been taught to work for the love of it, and that the money doesn't really matter.

Joan Burton is representative of thousands of women who drastically undervalue their contribution to the economy. She is one of so many who have been brainwashed by the men they work for and with and who establish their salaries, to the point they have no sense whatever of the value of the work they perform. Joan Burton and the many others like her are to be pitied, not admired, for the 20-year-old women's movement has left them untouched.

You follow this passage with a dissertation on "argue editing," in which an author's ideas are examined and intellectual loopholes are discovered and filled. Although you say that *The Washington Monthly* is "argue edited," it is obvious that the above reference to Joan Burton either completely escaped this process, or your staff is made up of sexist clones.

JOY PICUS
Los Angeles, California

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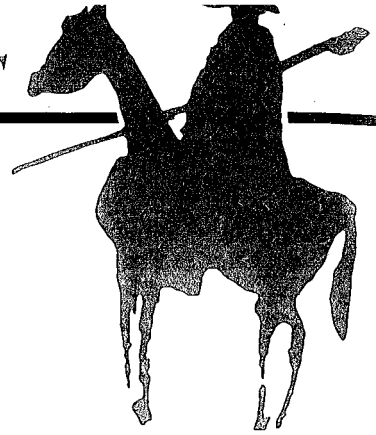
TILTING AT WINDMILLS



We hope our recent criticism of the post office has not inspired retribution, but we can't help being somewhat suspicious when letters addressed to *The Washington Monthly* at 1711 Connecticut Avenue are returned marked, "Delivery Attempted—Addressee Not Known." Ours is a small building, and we are the largest of the handful of tenants, with our name on the building directory at the entrance. We're also having trouble getting our own mail delivered. Recently a copy of this magazine addressed to "John D. Rockefeller, Governor's Mansion, Charleston, W. Va." was returned to us marked "Not Deliverable As Addressed—Unable to Forward." Rockefeller does live in the governor's mansion, and, since I happen to be from Charleston, I know that everyone in the city over five years of age knows where the mansion is. You can understand why we're getting mildly concerned, so please give us a call if your letters aren't reaching us, or if you miss a copy. We're almost always late getting out, but your copy should reach you by the 15th of the month it is dated....

Speaking of articles about the post office, *Time* recently ran a puff piece about it that I think would embarrass Ray Cave, whose leadership of that magazine I have generally admired. If *Time* is going to tell its readers how wonderful the post office is, it should reveal that it is the beneficiary of favored treatment by the post office, receiving "red-tag" service, which delivers its copies overnight for a few pennies, while you pay $9.35 to get your letter delivered overnight by express mail....

I seldom rise to the defense of Ronald Reagan, but I am moved to do so by recent criticism he received in the Austrian press for having an inaccurate, *Sound of Music* view of Austria. If Reagan is inaccurate in this view, he is being kind. *The Sound of Music* suggests that there was strong anti-Nazi sentiment in Austria. Those of us who saw the newsreels of the German troops entering Austria cannot recall one case like that of the memorable weeping Frenchmen when the Nazis marched down the Champs Elysees. All the Austrians cheered. Indeed, they were enthusiastic partners of the Germans until the tide turned against Hitler....

I have long admired the skill of lobbyists in coming up with euphemistic titles for bills that are in fact designed solely to serve the interests of their clients. One of the great triumphs of this genre was of course christening legislation that restricted competition as Fair Trade Laws. A more recent example, perhaps not so inspired but still quite effective in preventing any suspicion of what the bill is really about, is the Malt Beverage Interbrand Competition Act. What the bill does is give beer companies the right to grant wholesalers exclusive distribution territories. This means the wholesaler, who would have no competition in his area, can charge the retailer more, and he, in turn, will surely raise the price of your favorite brew....

House Bill 738 in this year's session of the Maryland General Assembly provides for the licensing of birdwatchers....

The National Bar Association is a black legal group that the Carter

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administration consulted on judicial appointments, just as it did the American Bar Association. Reagan stopped the practice. "We tried to keep the Carter relationship with the Reagan administration," the director of the black group explained to the *Dallas Morning News*. "But we were told by the White House and attorney general's office that they were going back to the traditional methods of clearing judges only with the American Bar Association. They said the American Bar Association was the representative body for lawyers. The National Bar Association was a special-interest group, they said, and they wouldn't use special-interest groups."...

If you're over 40, you will remember hearing stories of blacks "passing" as whites. Well, times have changed—at least in certain election districts. In Stockton, California, Mark Stebbins was running against a black incumbent for a city council seat. Stebbins told black voters that he was black. He won. The defeated incumbent checked with records and found that Stebbins's parents were white. He has filed suit, charging, according to AP, that Stebbins is "a white guy with a perm and vinegar in his hair."...

I hope we refuse to get involved in any kind of military action in the Persian Gulf. The interests we would be defending are those of Japan and Europe, on whose behalf we have already spent far too many dollars. We should not now spend lives....

A couple of months ago Teresa Riordan described in these pages the outrageous way workers' compensation is handled in this country. Another horror story has been provided us by a reader in South Carolina. It seems that one of the state's compensation commissioners, J. Dawson Addis, got a compensation award of $57,400 for a back injury. The award was made by the commission's chairman. The award was made despite the fact that Addis never lost a day of work because of the "injury," still serves as commissioner, and still plays golf....

From a little further south, in Augusta, Georgia, comes another inspiring story of state and local government at work. In the last few months, according to Fred Grimm of the Knight-Ridder News Service, the sheriff was imprisoned, the mayor arrested, and the district attorney accused of fraud. The sheriff, J.B. Dykes, was convicted of obstructing an FBI investigation into bribery and ticket-fixing. Three years earlier, according to Grimm, "Dykes had escorted his old friend and former sheriff, William A. Anderson, to jail after Anderson was caught selling marijuana."...

Speaking of marijuana, you may recall the prediction made by Calvin Trillin in these pages 15 years ago that "permanent pot parity" would some day become the hottest issue down on the farm. Trillin's prophecy, taken by our readers at the time with a rather large grain of salt, is looking increasingly prescient as the years pass. The National Organization for the Reform of Marijuana Laws estimates the value of the pot crop at $13.9 billion. In contrast, notes *The Washington Post*'s Ward Sinclair, "American farmers earned $13.4 billion for their corn and $12.4 billion for their soybeans."...

The Air Force is going to spend a couple of billion dollars on ten additional unmanned rockets to launch satellites into orbit. But wasn't the space shuttle supposed to serve that purpose?...

The *Milwaukee Sentinel*'s John Fauber has been looking into the fees probate lawyers are charging for handling estates. In one case he found that "lawyers' fees have gobbled up $280,000 of an estimated $350,000 estate." In another, he found that a lawyer, who was caught charging an excessive probate fee by the circuit court, was a member of the grievance committee that handled complaints against attorneys and until a few months ago had been its chairman. In other words, if you were overcharged by a lawyer, you would seek justice from a man who himself was overcharging. That's how lawyers keep us from becoming unruly....

If you read our article last month on the intractable problem of tribalism, you will be pleased to hear about Lagan College in Northern Ireland. It is the province's first fully integrated secondary school, with equal numbers of Catholics and

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Protestants. The boys and girls come from both middle and working class families and learn together about their separate cultures and traditions. "These children have to spend the rest of their lives together," the school's principal explains to Richard Ford of the London *Times*, "so they need to spend their school days together learning to respect and trust each other.". . .

I am indebted to Steve Taylor of Meriden, New Hampshire, for pointing out an important addendum to our item on radar surveillance of highway traffic. He points out that he never sees those radar traps on crowded roads where speeding is the most hazardous. Instead, he sees them on vast empty stretches of interstates. He surmises that the reason is that it's much easier to spot and apprehend lonely offenders escalating from 55 to 60 on the open road, than to nab them on busy highways where they're hard to pick out from the pack. . . .

On Tuesday, April 3, Gary Hart was defeated in the New York primary but won in Wisconsin. The Wisconsin primary was less important, of course. It was a popular vote beauty contest with delegates to be selected later. And, of course, Wisconsin is much smaller than New York. Still, Hart had defeated the Minnesotan, Mondale, in an adjoining state where Mondale had long been prominent. It also added to the evidence from Oklahoma, Washington, Montana, and Florida that Hart had strength outside of New England.

So I would have thought the story was worth front-page attention, subordinate to news from New York but still significant. And that's just the way *The Washington Times* treated it—with a three-column headline saying, "Mondale reestablishes status as front-runner," over one-column subheads that read, "Results in N.Y. take glitter off Hart campaign" and "Hart headed for slim win in Wisconsin." But what about the other papers? I looked at the Wednesday editions of *The New York Times,* the *Boston Globe,* the *New York Post,* the *Los Angeles Times,* and the *Philadelphia Inquirer* and could not find a word, much less a headline, about Hart's winning in Wisconsin. *The Washington Post* did mention it. Here's how: Under a banner headline stretched across the top of the front page that read, "Mondale Wins Overwhelmingly in New York," there was a five-column story. It did not mention Wisconsin but at its end, after "See NEW YORK, A8, col. 3," came the small italicized lines, "Hart wins narrowly over Mondale in Wisconsin's non-binding primary."

In contrast, the *Post* made Mondale's victory in the Wisconsin caucus on April 7 its lead story on the following day's front page. But the caucus involved only 30,000, as against the 700,000 who voted in the primary. And the primary had represented a chance for Hart to demonstrate electability, because both Republicans and Independents were free to cross over. The caucus, on the other hand, only demonstrated the sentiments of a few party regulars.

While I feel that this win was just one example of the consistently unfair treatment Hart got from the press from about a week after New Hampshire through New York, I have not yet decided whether to support Hart for the nomination. Like many people I know, I desperately wish I could combine the best qualities of Hart, Mondale, and Jackson into one man. Frankly, I hope the race goes to the convention. I think that's why I am disturbed when the press tilts too far in one direction as it did during March and threatens to stampede the process. Waiting for the convention will give us a chance to get to know the three leaders better and for other candidates, perhaps a Dale Bumpers, or Mario Cuomo, or Joseph Biden, to emerge. . . .

On one issue, the need for a Palestinian homeland, I think Hart and Mondale are cowards and Jesse Jackson is right. This makes me weep about Jackson's Hymie remarks because they make the right position seem to come from the wrong motives. There is a truly dangerous antagonism between blacks and Jews that has developed in the last two decades. It is a tragedy because they were once staunch allies in the struggle against discrimination of all kinds. . . .

Enough of politics. Let's have some fun. Have you heard about the *CME Bulletin*? It's *The Journal of*

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Continuing Medical Education for Primary Care Physicians. Translated, that means it tells you all about those lovely tax-deductible cruises and conferences. Here are some of my favorites from the winter 1984 issue: "Recent Advances in Cardiology at Vail," "8th Annual Hawaii Dermatology Seminar," "Cardiology at Wimbledon," and "Sun Valley Primary Care Conference." There's also one called "International CME: A Cross-Cultural View." This seminar is "designed to be informative to all medical and surgical disciplines." It comes with a choice of locations: Madrid and Barcelona, April 29 to May 6; or Paris, May 7 to 13; or Rio de Janeiro, May 21 to 29....

What I wonder is why we taxpayers have to finance these vacations for a medical profession that is already taking us to the cleaners. You've heard about those occasional souls who actually check the line items in their hospital bills—by the way, be sure to read *Standing Up to the Fine Print*, on page 32 of this issue—instead of just passing the bills along to Medicare or their insurance companies. The latest such case comes to me by way of H. Bruce Miller's column in the *San Jose Mercury News*, which tells of a man named Burr Clark, who, after a stay of 12 days in O'Connor Hospital, got a bill for $25,895. Clark, not being an expert in medical matters, could not evaluate most of the charges, but he was struck by one item: "pharmacy generic, $1,619.52." When he looked more closely he found that things like aspirin and Tylenol, which he bought for pennies at his drug store, were charged on his bill at $1.14 per tablet....

The Ethics in Government Act of 1978 was supposed to protect us against the danger that former officials would, immediately upon leaving government service, lend the expertise they had gained working for us to coaching private enterprises on how to con the federal agency that had employed them. But you can always count on the lobbyist to weave language into such a law that, while actually emasculating, seems to leave it intact as a bold reform.

Take the case of J. Lynn Helms, whose advice is now helping airlines evade the noise regulations that the FAA promulgated while he was its leader. Surely, he shouldn't be able to get away with such an egregious violation of the spirit of the law. But he is, because the statute says he can't communicate with his old agency in an attempt to influence decision-making for at least one year. He is free, however, as John Burgess of *The Washington Post* has revealed, to "advise" people who are lobbying the FAA....

The word "sleaze" is being overworked these days, but it does seem to me to have some application to two recent direct mail campaigns, one seeking members to the National Committee to Preserve Social Security and Medicare and the other seeking subscriptions for the *Smithsonian* magazine. The envelope of the first says, "ATTENTION POSTMASTER: TIME DATED OFFICIAL DOCUMENTS ENCLOSED EXPEDITE FOR IMMEDIATE DELIVERY." The second reads, "WASHINGTON POSTMASTER: PLEASE DELIVER THIS OFFICIAL INVITATION PROMPTLY." There is absolutely nothing "official" about either mailing. They're both lying, and we're subsidizing the mailing. They pay 3.3 cents to mail their letters. What do you pay to mail yours?...

Now for the lawyers. On the morning of February 16, 1983, 23 children from a California school boarded a boat called the *San Mateo* for a whale watching expedition leaving from Morro Bay Harbor. The weather was hazardous, and, according to the *Los Angeles Times*, Gerald Weaver, the captain of the *San Mateo*, steered the boat into a "monstrous wave" that capsized the boat and threw 23 children into the sea. Jim Funk and Jerry Mendez, two harbor patrolmen, realized the boat was sailing into danger, followed it, radioed Weaver trying to stop him, and, when the boat sank, plunged into the water and began hauling people out. They managed to save everyone but they rescued the passengers first and Weaver last. Weaver, it turns out, suffered brain damage from the incident. Funk has been sued by lawyers representing the Weaver family. The lawyer's name is Philip R. Weltin. He's probably proud of himself. So are most lawyers who do the same kind of thing. And that's what's wrong with them....

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If you sometimes suspect that we could compensate government employees less, still leave them well paid, and thereby cut the deficits at state, local, and federal levels, consider this recent evidence of the attractiveness of such employment. In Washington, D.C., the fire department announced tests for 86 positions. Two thousand applicants showed up. In Charleston, South Carolina, the U.S. Postal Service announced 25 openings. It was inundated by 7,300 applications....

If you were disturbed by the news in these pages last month about how many tobacco companies sell cigarettes abroad that are even more hazardous—often much more so—than those sold here, you should remember that American industry generally is under little legal inhibition against such practices. You may recall that last fall the Consumer Product Safety Commission voted to allow export of products that had been recalled under the Flammable Fabrics Act. This is shameful, another way we betray the trust much of the world once held for this country....

I'm a longtime admirer of Mike Royko's, but I believe that in the case of the lie-to-the-exit-pollers idea, he was beaten by the Circleville Philosopher, whose column appears in the *Taylor* (Texas) *Daily Press* and who proclaimed the idea in its March 7 edition....

I have since childhood been a sympathizer with the Baltic republics—Lithuania, Latvia, and Estonia—that were taken over by Russia at the beginning of World War II. I was therefore delighted to learn from a recent article by John Sherwood in *The Washington Times* that, if all other evidence of these countries' existence has been erased, the Lithuanian flag still flies over its old embassy at 2622 16th Street, in Washington. This is also a tribute to the profound survival instincts of bureaucrats. Dr. Stasys A. Backis, the charge d'affaires, has been serving his embassy without a country for 27 years. The secret of his survival, as in all such cases, is what is politely called "funding." When the Soviets seized the Baltic countries, the State Department took over $4 million in assets those nations held in the United States. They were ultimately pooled and now support the Lithuanian embassy.

I am comforted to know that the money is holding out and that Dr. Backis, upon his retirement, will be replaced by Stasys Lozoraitis, who is currently the Lithuanian charge d'affaires at the Vatican....

Last month, we said we didn't think most people knew that most federal employees got two raises a year. Now comes Representative Steny Hoyer, from Maryland, one of the bedroom states of federal employees. It may be no coincidence that Maryland ranks third nationally in getting federal money, after Virginia, which is of course the other federal bedroom state. In any event, Representative Hoyer is proposing, according to Mike Causey of *The Washington Post*, that federal managers, in addition to getting their regular civil service increase and the full longevity step raise, will receive a third bonus....

Causey also reported recently that 69 percent of senior federal executives "said that the current retirement system—which permits workers to retire at age 55 with 30 years' service on 56.25 percent of salary—was a major reason they came in government." Now I want each one of you to think very seriously about this. Do you really want the senior levels of your government to be staffed by people whose major concern in life is retirement benefits?...

If only the fellows at the Pentagon were as clever in military matters as they are in conning Congress. The story of the latest demonstration of their skill in the latter art began last fall when reformers managed to get through Congress a law requiring written warranties on the weapons produced by defense contractors. Since so many weapons don't work, it was clear to Pentagon officials that this requirement would place an unconscionable burden on the defense contractors for whom many of those officials would work after leaving the government. So Pentagon lobbyists leapt into action, quietly slipping into the 1984 supplemental budget request a repealer of the new law. In order to grease the repealer's passage, the lawyers for the Pentagon had it classified under military construction, which meant it went to a friendlier committee than the one that

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had orginated the new law. How friendly? Well, three of the five members of the Senate's military construction subcommittee are pro-Pentagon Republicans: Jake Garn, Paul Laxalt, and Mack Mattingly. . . .

"What is Rep. Dan Rostenkowski going to do with half a million dollars in leftover campaign money? Take it with him?" and "With no opponent why did Rep. John Duncan raise more than $200,000 in campaign funds?" These are two of the headlines in a series of ads placed in papers in the states or districts of politicians who should do some explaining about their campaign finances. The ads invite constituents to write the offending official and ask for an explanation. I like the idea. If you do, too, you can send a contribution to the organization that's behind them, Citizens Against PACs, 2000 P Street, N.W., Washington, D.C., 20036. . . .

Like most people who have seen it, I find much that is moving in Arthur Miller's *Death of a Salesman*, which is now enjoying a spectacularly successful revival on Broadway. During the year 1968, I often felt I *was* Willy Loman. That was when I traveled to New York almost every week trying to raise money needed to start this magazine. More often than not—much more often—I returned empty-handed. And as I would trudge homeward through Washington's train station at the end of another unsuccessful trip, my dream, just as Willy's had been, seemed threatened with being overwhelmed by the cruel reality of failure.

So I know why audiences weep when they see the play. I remember the lump in my throat when I first saw it at the Morosco Theatre in New York in February 1949. But I also think at least part of that response springs from a not-very-healthy kind of self-pity. Indeed, Miller once told an interviewer that "when the audiences weep they are weeping for themselves."

This is clearest in the play's symbolism, in which modern American society is depicted as a garden in which seeds can't grow or as a jungle in which you should "never fight fair with strangers, boy." In other words, it's not our fault, we are all victims of a society in which it is impossible to function decently and creatively.

Miller seems to confirm this analysis in an essay called "Tragedy and the Common Man," in which he says the destruction of the tragic hero "posits a wrong or evil in his environment," the opposite of "a condition of life in which the human personality can flower and realize itself."

The only escape seems to be working outdoors with one's hands—as a cowboy or a carpenter, or—in the words of Willy's son Biff—"mixing cement on some open plain." But wait, says Miller, there is one other honorable way out—become a lawyer like Biff's high-school friend and neighbor, Bernard. This has to be one of the quaintest traits of the New York Jewish radical left of which Miller was a part when he wrote *Death of a Salesman*. They will excoriate capitalism, finding it totally evil, without the slightest redeeming virtue, and then urge their sons to choose careers as its servants, as clever but parasitic clerks to the established system.

What I most fear is that the social mood that made *Death of a Salesman* so popular in 1949 is recurring today. Then men had come home from the war, tired of danger and seeking security, just as their fathers had sought security from the trauma of the Depression. And the wives, like Willy's Linda, didn't want them going to Alaska, as his brother, Ben, urged him to do. They wanted them to have a nice steady career with the company. Because, finally, the men wanted the security just as much as their wives did, they became company men. But this often meant they did work that wasn't truly satisfying, work they really didn't like or respect.

So I think Miller was right when he said that his play "touched a fear that one has lied to oneself over a period of years in relation to one's true identity and what one should be doing in the world." My own fear is that again today we have a ready audience for the play because far too many people are seeking secure niches in our corporate and government bureaucracies—with, ironically, many of the brightest serving as lawyers in these organizations—and not doing work that really excites them. I don't want them to go to *Death of a Salesman* and wallow in self-pity. I want them to change their lives and do work that counts.

—*Charles Peters*

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THE Case AGAINST Privacy

What we lose when we mind our own business

"The telescreen received and transmitted simultaneously. Any sound that Winston made, above the level of a very low whisper, would be picked up by it; moreover, so long as he remained within the field of vision which the metal plaque commanded, he could be seen as well as heard. There was of course no way of knowing whether you were being watched at any given moment. How often, or on what system, the Thought Police plugged in on any individual wire was guesswork. It was even conceivable that they watched everybody all the time. But at any rate they could plug in your wire whenever they wanted to. You had to live—did live, from habit that became instinct—in the assumption that every sound you made was overheard, and, except in darkness, every movement scrutinized."

The all-seeing telescreen, the hidden microphones, the ubiquitous Thought Police—it is a tribute to George Orwell's literary genius that his portrait of a world utterly lacking in privacy remains vivid even to those who know *1984* only by reputation. And, quite predictably, the arrival of Orwell's fateful year has brought with it a noticeable increase in magazine articles, essays, and speeches that warn darkly of the parallels between Oceania and today's America.

Representative of these warnings is a recently published *1984 Calendar*, which commemorates, day by day, over 1,000 various affronts on civil liberties in the last half-century. In the introduction to the calendar, Nat Hentoff of the *Village Voice* approvingly quotes the late William O. Douglas of the Supreme Court: "We are rapidly entering the age of no privacy, where everyone is open to surveillance at all times, where there are no secrets from Government. . . . Secret observation booths in Government offices and closed television circuits in industry, extending even to the rest rooms, are common. Offices, conference rooms, hotel rooms, and even bedrooms. . . are 'bugged' for the convenience of Government. Peepholes in men's rooms are there to catch homosexuals. . . . The dossiers on all citizens mount in number and increase in size. Now, they are being put on computers so that by pressing one button all the miserable, the sick, the suspect, the unpopular, the offbeat people of the nation can be instantly identified."

Hentoff adds, "Every one of Douglas's proofs

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BY PHILLIP KEISLING

Illustration by Andy Meyer

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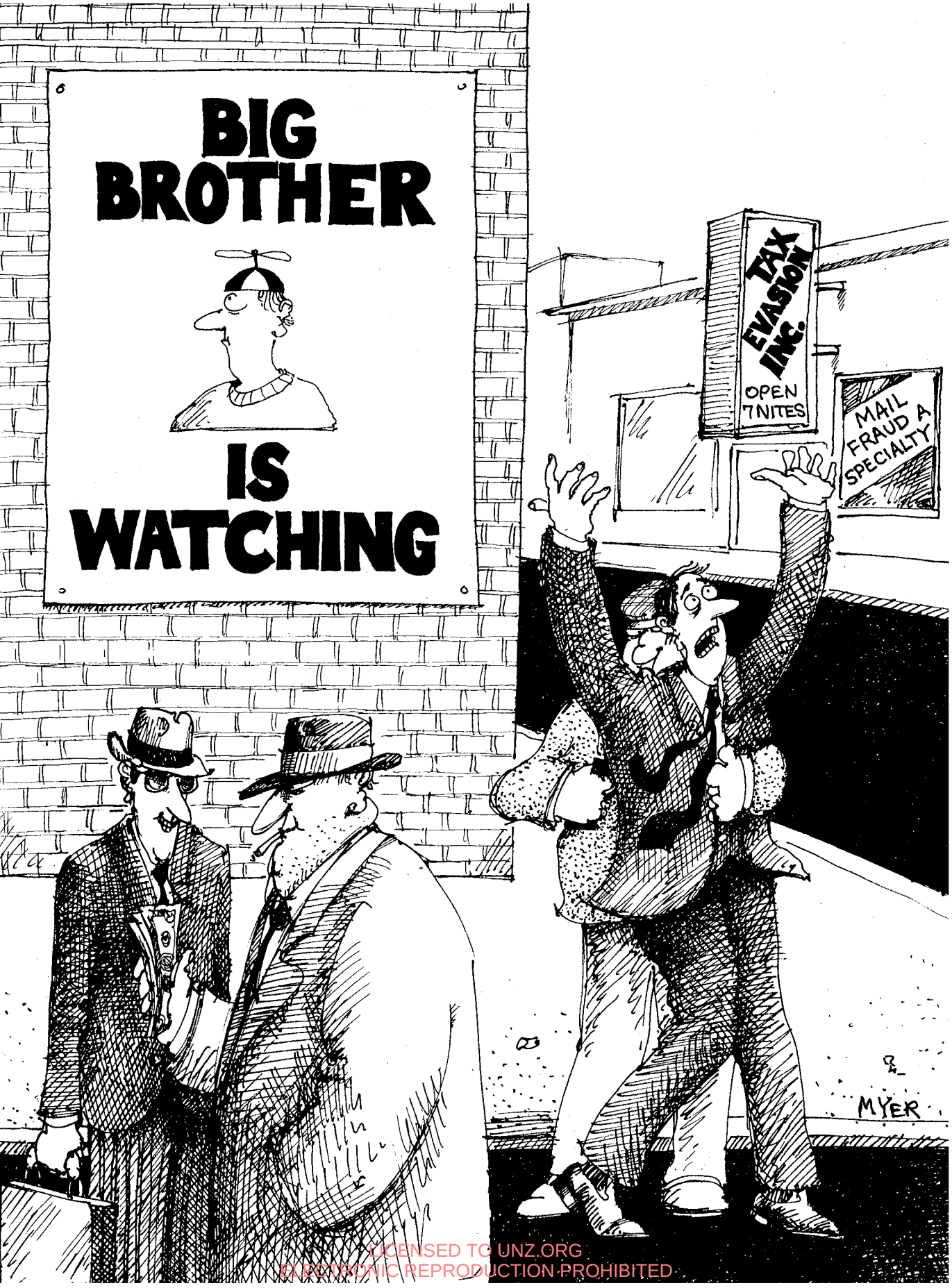

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that we are entering the age of no privacy has grown more unmistakable, in part because the technology has become more sophisticated and miniaturized, and in part because as time goes on, it is harder for more and more Americans to remember when they had a full-scale expectation of privacy."

While some might disagree with Hentoff and other civil libertarians about just *how* closely America resembles Orwell's Oceania, a remarkably broad consensus of liberals and conservatives share the assumption underlying these warnings: that privacy is a precious, inexorably eroding commodity to be vigilantly protected as the curiosity of government and the sophistication of surveillance technology steadily grows. (Infrared telescreens, for example, could now spy on Winston Smith in the dark.) A 1979 Harris poll found that one-third of those surveyed already believed America was "close to the 1984 syndrome"; for most people, the key question about *1984* isn't so much If, as How soon.

Yet take a closer look at the widespread concern for privacy, and the assumptions underlying it, and two striking facts emerge. The first is how fundamentally wrong Orwell's terrible vision has proved to be. Indeed, if one defines privacy as the ability of individuals to escape the opprobrium of society and the punishment of government for behavior and thoughts that conflict with prevailing laws and standards, Americans today actually enjoy more "privacy" in their daily lives than *ever before*.

The evidence is abundant, the examples both trivial and profound. Neighbors no longer can listen in on regular phone conversations through party lines; indeed, neighbors often don't even know one another. The apartment doorman who once scrutinized every tenant's comings and goings has largely disappeared. The doctrine of *in loco parentis* is virtually dead on college campuses; rules regulating students' personal behavior either don't exist or are widely ignored. The government's capacity to correctly identify its citizens is so flimsy that the Senate's Permanent Subcommittee on Investigations recently estimated that fraudulent use of identification documents robs the government of up to $24 billion annually. Three of four *reported* crimes against property go unsolved, as do about half of all rapes and aggravated assaults; the percentage of unresolved murders has tripled in the last 20 years. In many cities the government's ability to process parking tickets is so poor that people feel unfairly persecuted when their car finally gets towed.

Perhaps the best illustration of how unencumbered the average citizen feels is the respect shown the government agency that intrudes more into the personal affairs of the average citizen than any other: the Internal Revenue Service. Last year the IRS itself estimated that nearly half of all Americans cheated on their income taxes, and almost all of them got away with it. The government—and more precisely the rest of us—lost at least $80 billion as a result.

Those who think privacy is steadily vanishing, as if it were some depletable natural resource like oil, should briefly consider two areas of their lives where most people have some reason for keeping secrets: their relationship with the law and their sexual behavior. The police today are far less noticeable than they were a generation ago, when officers patrolled neighborhoods on foot and made a point of staying abreast of such matters as the arrival of a stranger or the domestic difficulties of the couple who lived in the corner apartment. Today's police patrol in climate-controlled squad cars; contact with the average citizen is limited largely to responding to an occasional call for help or apprehending him for a minor traffic violation. Far from being a police state, America has fewer cops per capita today than 30 years ago—even though the incidence of crime has soared. For cities of 50,000 and more, for example, there were 3.3 police officers in 1948 for every violent crime reported; in 1978, there were just 0.5. What characterizes American law enforcement is not the citizen who's harassed and punished for "being different" or holding an unpopular political view. It's the four-time rapist who doesn't get caught after his fifth assault, or who, if he is caught, gets his case plea-bargained to aggravated assault and becomes eligible for parole after six months.

The strictures on sexual behavior have changed even more dramatically. Laws have long existed that prohibit extramarital sex, homosexuality, pornography, and, in some states, certain kinds of sexual activities among married people. But government has seldom been aggressive in enforcing such laws, relying instead on community standards to proscribe sexual behavior. In the past, this community "enforcement" has consisted of many devices: the prejudice meted out to unwed mothers, illegitimate children, and gays; the retribution of the community for unapproved liaisons; the vicious gossip that often originates with the suspicious motel clerk or neighbor.

Who can doubt the sea change that has occurred in the space of just one generation? A wide range of sexual behavior has become accepted or

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> The details of an adolescent homosexual experience have no business in a government computer file, but if somebody's been convicted of murder, or has made loose threats about killing the president, the government should know.

at least acquiesced in. Popular magazines and television sympathetically portray—some would say encourage—behavior that used to go by such pejorative terms as "adultery." Even in small towns the motel clerks are often indifferent as to who their guests are and what they do. An increasing number of gays feel comfortable living in the open; one homosexual recently sued the Department of Defense for revoking his security clearance, arguing quite persuasively that he could hardly be subject to "blackmail" by foreign agents if he'd made no secret of his sexual preferences.

True, thousands of government computer banks store data on everything from our criminal histories to our student loan portfolios. Our checks are regularly photographed, our credit histories bought and sold by private companies, our speeding automobiles tracked silently by radar, our wanderings in shopping malls watched by video cameras. Yet these hints of *1984* are a far cry from the mass rallies, Big Brother posters, and pervasive sense of paranoia exhibited by the inhabitants of Oceania. Indeed, Orwell's vision of the future was as flawed as the far happier one, replete with slick monorails and bubble-domed cities, advanced by his contemporary, Walt Disney. (For more on *1984*, see sidebar, page 17.)

The second striking aspect of the contemporary concern with privacy is how often the effort to protect it goes to absurd and self-defeating extremes. Consider a few examples:

—In Chicago, U.S. District Court Judge George Leighton recently overturned the conviction of four terrorists accused of plotting to bomb several military installations. The government had obtained a legal warrant to install electronic surveillance devices in a house frequented by the accused, and a video camera caught them in the act of making bombs. Leighton ruled that while tape recorders and wiretaps were permissable, the video cameras constituted an unconstitutional violation of the defendants' privacy.

—American citizens owe their fellow taxpayers nearly $40 billion in delinquent government loans. Far and away the most efficient means of collecting this money would simply be for the IRS to deduct payments from income tax refunds, which 80 percent of all taxpayers receive. But laws designed to protect the privacy of income tax records prohibit this collection strategy. IRS information similarly is unavailable to verify claims made by those who apply for means-tested government benefit programs such as Aid to Families with Dependent Children, food stamps, veterans pensions, Medicaid, and Social Security Disability. When the Social Security Administration recently issued a form requiring disability applicants to grant access to their income tax records, a U.S. Court of Appeals ruled it unconstitutional.

—Drunken drivers kill more than 20,000 Americans a year, which is a major reason the National Highway Traffic Safety Administration maintains a national file of "problem drivers" called the National Drivers Register. The file lists those whose licenses have been revoked or suspended for such offenses as driving under the influence of intoxicants. But because of longstanding privacy concerns, the file can be used only by state licensing officials; law enforcement personnel have no access, though they supply much of the information. As a result, police officers who stop an erratically driving motorist in, say, Connecticut usually have no way of finding out whether he's had his license previously revoked for drunken driving in three other states.

—A Florida state appeals court recently freed Anthony Insurato, who'd been convicted of murdering Irwin Trimbull. Trimbull routinely tape-recorded important business conversations; the key piece of evidence at the trial was a tape-recorded exchange during which an agitated Insurato shouted, "We got a deal, yes or no?" followed by five gunshots. The court ruled that Insurato's "reasonable expectation of privacy"

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had been violated and ruled the tape-recording inadmissible.

—In a case before the U.S. Supreme Court, *U.S. vs. Arthur Young Co.*, the accounting industry is alleging that a heretofore unrecognized "accountant's privilege" should protect the privacy of certain information that corporations give them when audits are performed. Though hired by the corporation, these auditing firms are acting on the public's behalf. The specific information at issue in this case—which the accounting firm won in a lower court—is something called the tax accrual work paper, which reveals to what extent corporations are paying their legal share of taxes.

Perhaps the most maddening examples of this exaggerated concern for privacy involve the government invoking such protections to cover up the illegal or dubious activities of its own employees. Police departments, for example, routinely invoke an officer's "right to privacy" to prevent disclosure, even to confidential citizen review committees, of embarrassing information about an officer's misconduct. (The New York state legislature recently declared off-limits all records that "would affect the career and promotion of officers"—a definition that can be applied to virtually everything in an officer's file.) In a case that's now before the U.S. Court of Appeals, the FBI is refusing to release to NBC's Carl Stern the names of three high-ranking employees who were formally censured several years ago for misleading Justice Department and congressional investigators as to the extent of the Nixon administration's "black bag" jobs against political opponents. The FBI claims that release of the names would serve no purpose and would "violate the employees' right to privacy."

The Ghost of J. Edgar

Not all the concerns of privacy advocates have been codified into the statute books—thankfully. In Oregon, male prison inmates have sued the state alleging that "pat down" searches by female prison guards violate their privacy rights; an appeals court has divided evenly on the issue. Aryeh Neier, former president of the American Civil Liberties Union, has long advocated the expungement of all conviction records, arguing that once a fine has been paid or a prison term served, retention of the information is merely "punitive." Put another way, if the thrice-convicted embezzler wants a job in the Treasury Department's Bureau of Printing and Engraving, the government would know his criminal history only if he chose to tell it. The "right to privacy" has also been used to argue against all laws relating to the use and sale of heroin and other drugs, against laws that require the use of certain safety devices in automobiles, and against electronic scanning machines in supermarkets. Privacy advocates have also expressed concern about "pay cable television" since the billing process would enable outsiders to know what you're watching—as if this is somehow more threatening than the fact that one's tastes are now similarly known by the subscription departments of *Hustler* or the newsletter of the Socialist Workers Party.

Some of the concerns of groups like the ACLU certainly are legitimate, particularly where the law fails to keep up with advances in technology. Privacy laws that regulate electronic surveillance are vague with regard to such things as cordless telephones and digital communications between computers. We should also not be sanguine about the potential of government to invade the privacy of its citizens. There are some aspects of a person's life that the government has no business knowing anything about, and other areas where such knowledge should be collected only under special circumstances (see sidebar, page 27).

Most important is to recognize the long litany of privacy abuses that the government has committed in the past—and about which civil libertarians have been rightfully outraged. During the 1950s there was McCarthyism; countless reputations and lives were ruined by innuendo, half-truths, and accusations based on "secret dossiers" and "intelligence reports" that were often gathered illegally and rife with inaccuracies. During the 1960s the CIA and the military engaged in widespread, and illegal, spying on civil rights and antiwar demonstrators. During the 1970s, Nixon's assault on privacy included using the IRS to harass political opponents, opening dissidents' mail, and burglarizing the files of Daniel Ellsberg's psychiatrist. This spirit of government paranoia still lives. Witness the tape-recordings of Charles Wick and the Reagan administration's plan to administer polygraph tests to detect those leaking government documents.

If any single American lends credence to the civil libertarians' worst fears about privacy, it is the late J. Edgar Hoover. As director of the FBI, Hoover showed few qualms about trampling on the privacy of citizens in his effort to ingratiate himself to a string of American presidents and ensure his bureaucratic survival. Hoover's activities included wiretapping Martin Luther King's bedroom, identifying congressmen and other key officials who were alcoholics or

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homosexuals (for political blackmail purposes), and the infamous COINTELPRO campaign. Hoover's venality was exemplified by the psychotic breakdown and eventual suicide of actress Jean Seberg after the FBI disseminated false rumors that one of her children (who was subsequently stillborn) had been fathered by a member of the Black Panthers.

Still, it's important to understand the need to make distinctions about the kind of information that should be collected by the government and under what circumstances it can be used. The details of an adolescent homosexual experience have no business in a government computer file, but if one has been convicted of murder, or has made loose threats about killing the president, the government should know that. If you're a supporter of the nuclear freeze, the government should not be keeping a file on you, much less tapping your phone; if you're a zealous member of the Ku Klux Klan whom the government has good reason to suspect of terrorizing a black family, the same stricture should not apply. If you write a nasty letter to the president, the government should not retaliate by inspecting your tax return, but it should have that prerogative if you've declared bankruptcy to escape repayment of $30,000 in government-subsidized student loans.

Making such distinctions is not always easy, of course. What characterizes much of the debate over privacy is how seldom they are made at all. Anything that could conceivably endanger privacy is viewed with alarm; if information could be used wrongly, many are inclined to not collect it at all. It is a view in which privacy is considered an inviolate right, much like freedom of speech or religion, and worthy of the same, absolute standard of protection.

This view, however, not only ignores the complexity of the issue but overlooks privacy's rather ambiguous status, both in law and in our culture. Though "privacy" is often preceded by the phrase "right to," the word is mentioned nowhere in the

What Orwell Really Feared

George Orwell's *1984* is often read these days as a parable about privacy. But readers who dwell too much on the idea that "Big Brother is watching you" are missing Orwell's most important point. For Winston, Orwell's protagonist, the most oppressive element of life in Oceania is not the pervasive presence of the telescreens or the Thought Police. While they make it possible to record Winston's transgressions, they are clearly secondary. Far more significant—and terrible—is the state's randomness in deciding what it will and will not allow. In Oceania, there are no laws; what is permissible one day can easily be used the next to put someone in jail, to render him a nonperson. Orwell explains: "Thoughts and actions which, when detected, mean certain death are not formally forbidden, and the endless purges, arrests, tortures, imprisonments, and vaporizations are not inflicted as punishment for crimes which have actually been committed, but are merely the wiping-out of persons who might perhaps commit a crime at some time in the future."

The image of Winston's constant struggle to hide his actions dominates not because his "privacy" is sacred but because in Oceania no individual actions are politically neutral. At home, Winston blanches at keeping a diary, writing with an old-fashioned fountain pen, owning a glass paperweight; in public, Winston constantly monitors even his facial expressions, lest he commit facecrime. Orwell's point here is not that all invasions of privacy inevitably lead a country to totalitarianism, but that totalitarian states will invade privacy in random ways to keep their subjects under control.

The leaders of Oceania have come to power not by way of piecemeal erosions of privacy but by manufacturing a continual state of war, which has enlarged the nationalist feelings of the populace to grotesque proportions. Orwell had witnessed the success and the ghastly results that Hitler and Mussolini were able to achieve by preying upon nationalism; he believed that as a unifying force there was nothing in the modern world that could compare: "As a *positive* force there is nothing to set beside it. Christianity and international socialism are as weak as a straw in comparison to it." Orwell was himself something of a patriot, but he also understood that if a nation's leaders allowed themselves to "dislocate their sense of reality," as the militarists who rule Oceania do, then the state's power could grow intolerable. Viewed in this light, the Reagan administration's move to keep the press out of Grenada so they could tell the story their way—as Orwell would put it, so they could "forget facts that have become inconvenient"—looks more like a step towards *1984* than the prospect of having a dog sniff your luggage for drugs at the airport.

—*Kay L. Gunderson*

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Constitution. In fact, the phrase "right to privacy" can be traced to an 1890 *Harvard Law Review* article by two young attorneys, Samuel Warren and Louis Brandeis. (The article also reflected the deep-seated, often unacknowledged conflict between privacy and the press; Warren, an aristocrat married to the daughter of a Massachusetts senator, initiated the article after becoming vexed with newspaper coverage of his lavish social affairs.) Not until 1965 did the Supreme Court, in *Griswold vs. Connecticut*, give constitutional imprimatur to "privacy"; Justice William O. Douglas asserted that the right was enveloped in the "penumbra" cast by other constitutional rights. Justice Hugo Black, who almost always voted with Douglas on civil liberties matters, ridiculed this notion in his dissent. "I like my privacy as well as the next one," Black declared. "But I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision."

Dixon vs. Winesburg

The role of privacy in the larger arena of American life and culture has been equally ambiguous, and nothing better illustrates this than the two very different characterizations of the small town in our literature, movies, and history. The more benign vision of the small town is as old as John Winthrop's "City on a Hill"—a community where individuals with common values band together to live in open view, not just of each other but of the rest of the world. This is also the small town of Thornton Wilder's Grover's Corners in *Our Town*, of River City in *The Music Man*, of Bedford Falls in *It's a Wonderful Life*. And it is the small town of Dixon, Illinois, idealized by Ronald Reagan, where neighbors care about one another and help in times of need, where "gossip" is sincere and well intentioned, where the ever-present concern for reputation prevents many a young man and woman from being led astray by temptation. In this small town, the knowledge that one's character is a matter of public interest encourages good behavior, whether it's contributing to charity or simply being friendly to the store clerk who knows your family. The virtues of the parents are sufficiently known to reflect well on the children, and those who've made a mistake or two can be forgiven—and false rumors dismissed—if one's good character is widely acknowledged.

In this version of the small town, privacy is not an overwhelming concern. If anything, those who insist on it are viewed as somewhat unfriendly and antisocial. Perhaps most important, an obsession with privacy is viewed as undermining the very bonds of community that knit the town's inhabitants together. As a minor character chastises her neighbors in Alfred Hitchcock's *Rear Window* (the setting is an urban apartment building, but the sentiment is distinctly small-town): "You don't know the meaning of the word 'neighbor'! Neighbors like each other. Speak to each other. Care if anybody lives or dies. But none of you do."

But there's another, darker version of the small town. This is the small town of Zenith in Sinclair Lewis's *Babbitt*, or of Sherwood Anderson's *Winesburg, Ohio*. And it is a version that's even more prevalent in the modern American tradition—witness the high opinion generally exhibited by (largely urban) literary critics for these latter works, while those such as *Our Town* are commonly dismissed as being sentimental and shallow. It is also the small town that Reagan alludes to occasionally, such as in his story of the local hotel owner who refused to give his football teammate a room for the night because he was black.

This small town is characterized by small-mindedness and vicious prejudices. Those who stray from the mainstream, particularly on matters of sexual behavior and politics, can be ruined by malicious gossip. Those who make mistakes early in life often have no chance for redemption; their bad reputations cannot be shed. In this atmosphere, privacy is jealously protected for reasons of survival but still is often impossible. Facts that are irrelevant to one's character—say, an illegitimate birth, an unfortunate marriage—have an inordinate effect on one's life, and false rumors often have devastating consequences. So it is in *Winesburg, Ohio* with the story of Wing Biddlebaum, a popular school teacher whose affection for his young students was often exhibited by his hugs and hair-tousling. When a disturbed young boy begins to spread unseemly stories, such displays suddenly take on a sinister cast; Biddlebaum is forced to flee a lynch mob in the middle of the night, never to teach again.

Escaping the small town—and one's past—is a time-honored theme in American letters, not to mention the lives of many prominent Americans. Bob Dylan left a small mining community in northern Minnesota, Andy Warhol a small steel town in Pennsylvania. In her recently published memoir, Rosalynn Carter tells of her ambivalence about Plains, where neighbors

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selflessly helped each other in time of crisis, such as when her father died young, but in which "There was no privacy; everyone knew each other's business." She found her escape in marrying Jimmy Carter, and when he decided to return after his Navy career, "I argued. I cried. I even screamed at him. I loved my life in the Navy and the independence I had finally achieved. I knew it would be gone if we went back to live in the same community with my mother and Jimmy's mother. Plains had too many ghosts for me."

Similar sentiments have been felt by millions of Americans, particularly in the post-World War II era, as they left the nation's farms and small towns for the big city. There, they were free to experiment with everything from politics to sex; they could also start a new life, trying to make amends for past mistakes. Perhaps most commonly, they could shed their lower-class origins and, their pasts unknown, acquire the tastes and mannerisms that would signal a more sophisticated background. The photographs of parents back at the farm were kept out of sight; one didn't voluntarily reveal one's small-town origins—unless, of course, it somehow was fashionable to do so. The privacy afforded by the big city gave them a chance to remake themselves—in a way, providing a modern version of the 19th century West.

This latter version of small-town life has also shaped many contemporary views on the importance of protecting privacy from government abuses. Hoover, for example, in many respects resembled the small-town gossip, capable of destroying people's reputations with a few well-placed whispers. And Hoover could wreak more havoc than the stereotypical small-town busybody; he had thousands of agents at his disposal to ferret out, and fabricate, damning information and he had a succession of U.S. presidents—Lyndon Johnson comes particularly to mind—eager to listen over the backyard fence. And in their frequent criticisms of more efficient information-gathering techniques, groups such as the ACLU, whose headquarters is in New York City, reflected this view of America-as-Winesburg. The less the government knew about the lives of its citizens, the better off everyone would be.

But America has obviously not become one giant Winesburg. In fact, much evidence suggests that Americans desire not more privacy, but less. It shows in the desire of many gays to live in the open, to transcend the need for privacy as it were. And it shows in one of the common pathologies of life in the big city, where the loudly proclaimed preference for being "left alone" often masks deep-seated feelings of loneliness. The loneliness arises in part from the wish to have others notice things about your past or your character of which you are proud, and in part by the desire to have others care enough to know the more personal details of your life.

These yearnings are reflected in the countless pages of personal advertisements by people seeking companionship and romance, not to mention the armies of young professionals who pay analysts $75 an hour to discuss their feelings of isolation. And it is revealed in the vicarious pleasures taken in the cult of celebrities, an impulse probably more prevalent in New York City than anywhere else in America. Whether it's exhibited in teenagers who breathlessly collect autographs of rock stars, or in the more sophisticated version of dropping the names of famous people at cocktail parties, this phenomenon reflects an unspoken envy of those who've sacrificed some of their privacy for the seemingly more gratifying commodity of notoriety.

This is not to endorse the electronic surveillance of what transpires in the bedroom; rather, it is to recognize the ambiguous status that privacy enjoys in American life. And more to the point, it is to recognize that society, and the government agents responsible for its protection and well-being, has an interest in knowing certain information that individuals might even prefer to conceal. Anonymity can mean freedom from the effects of prejudice; it can also undermine the public's trust in the law by giving criminals free rein to afflict citizens and defraud the government. A respect for individualeccentricities is the hallmark of a democratic society; a pervasive sense of moral relativism, in which virtually all behavior is acceptable, eventually this destroys the basic values underlying a healthy nation. Having the police peer through keyholes is repugnant to us; having neighbors who keep track of the comings and goings of people often has the salutary effect of reducing the need for police in the first place.

Unfortunately, this appreciation of the complexity of the privacy issue—an appreciation of the best aspects of small-town life, as it were—often is not recognized by those who style themselves as the guardians of privacy. Three examples of such short-sightedness are worth exploring at some length, for they graphically illustrate how the concern for privacy can go astray, and what the costs maybe.

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Springing the guilty

The first area is that of search and seizure. The Fourth Amendment states simply that citizens have the "right to be secure... against searches and seizures." In 1914 the Supreme Court, in *Weeks vs. U.S.*, ruled that the right to be secure from such searches—one's right to privacy, as it were—was so compelling that any evidence obtained by the government in an illegal search should not be admissible as evidence in court. This tenet, known as the exclusionary rule, initially applied only to federal courts. But in 1961, in *Mapp vs. Ohio*, the U.S. Supreme Court mandated that state and local courts apply the rule as well.

The assumption underlying the exclusionary rule is that the citizen's right to privacy is so important that it's better to let obviously guilty people go free than to tacitly encourage illegal searches. Yet what's striking about the exclusionary rule is how it generally fails in this deterrent purpose, while doing nothing to protect or compensate the innocent. The citizen whose home is ransacked at 3 a.m. by gun-toting narcotics agents with the wrong address has no redress at all under the exclusionary rule; there's no evidence to suppress.

As for the law enforcement officer who finds heroin or even a murder weapon in an illegal search, the exclusionary rule supposedly "punishes" by forcing him to watch a guilty defendant return to the street. Yet however much this might vex the officer, it hardly qualifies as punishment. Seldom is the officer disciplined for his actions; if anything, his colleagues rally around him and direct their wrath against the judge who let an obviously guilty, often dangerous criminal go free. The party that really suffers is the public; a known criminal is now back in its midst who may well commit further crimes. The exclusionary rule's defects are further compounded by the fact that it makes absolutely no distinction between the police officer who makes an honest mistake in the heat of pursuing a suspect and one who commits an egregious violation of a citizen's rights. In all instances, the exclusionary rule requires the evidence to be thrown out.

In practice, the exclusionary rule has many perverse results. In the case of *U.S. vs. Shorter*, for example, the conviction of an Ohio bank robber was overturned. The reason? Upon being apprehended, the robber had refused to consent to a search, whereupon the FBI agent phoned a federal magistrate and obtained a search warrant. But the magistrate had required the FBI agent to swear his oath of truthfulness part way into the conversation *rather than at the very beginning*. The search was ruled illegal; the evidence

Sometimes, the Cops Need to Know

Dewitt Kelley's short life must have been filled with terror. After two and a half years of being beaten and left by himself often for days at a time, Dewitt was taken away from his mother and placed in foster care. Two years later he was returned to the custody of Janice Kelley, despite the fact that she suffered brain damage from chronic use of PCP. Eight months later, Janice Kelley struck her son with an ax handle. Dewitt died several days later in the intensive care unit of a Los Angeles hospital.

Dewitt is just one of the several million children who suffered from physical abuse, neglect, or sexual molestation last year. How can such brutality occur? Partly, the blame lies with our chronically understaffed and underfunded social service agencies. For example, in the agency for for social services in Los Angeles, 600 social workers service to 69,000 children—one worker for every 100 children. But another obstacle is our exaggerated respect for family privacy. Neighbors, friends, and teachers—those in the best position to notice symptoms of child abuse—are too reluctant to interfere in what they see as a "family matter."

This "mind your own business" ethic has even been codified into law. If, for example, out of the hundreds of domestic disturbance calls the police receive in one evening one were known to involve a family with a history of child abuse, the case could be given priority. But secrecy laws on the books in most states now prevent social service agencies from sharing this information with the police. And, unfortunately, that's the way the American Civil Liberties Union would like to keep it. Writing in the November 1976 issue of the ACLU's *Privacy Journal*, Trudy Hayden attacked "the national enthusiasm for child abuse reporting," because it could be used to "track, label and stigmatize a child as a risk." Dewitt Kelley probably would have welcomed that kind of stigma.

—Mairi N. Morrison

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obtained—a gun and the loot—was inadmissible.

The specifics of *Coolidge vs. New Hampshire* are somewhat more grisly. After police discovered the body of a 14-year-old girl, her throat slit and a bullet in her head, they contacted the wife of a suspect whose car resembled one seen near the scene of the crime. The wife gave the police her husband's guns, and a ballistics test revealed that one of them had fired the fatal bullet. Soon after that, the state's attorney general issued a warrant for Coolidge's arrest and the search of his car, from which vacuum sweepings were taken that matched the victim's clothing and proved to be the key evidence in the case. But because of minor defects in the warrant, and because the attorney general was not acting as a wholly "neutral party, " the U.S. Supreme Court ruled the search illegal and the evidence therefore inadmissible.

So passionately is the exclusionary rule defended by its adherents that a large portion of the population mistakenly believes that the Constitution somehow mandates it. It does nothing of the sort. The exclusionary rule is simply the remedy that a divided Supreme Court chose to use to discourage unlawful searches. It's also a remedy unique in the Western world; no other major country with similar constitutional protections against unreasonable searches and seizures has seen fit to embrace it. In England, Canada, Germany, Israel, and many other countries, evidence can be admitted if it is authentic and relevant to the case, even if it's obtained in an illegal fashion. (There are exceptions. Canada for example, is typical in allowing a judge to suppress evidence that has been obtained by what he believes was a fundamental violation of the defendant's rights.) Does this encourage rampant misbehavior on the part of police officers eager to convict defendants? Not at all: in these countries, judges also punish officers, on the spot, for their transgressions in gathering evidence. The process is similar to a contempt of court citation; the officer can be fined and, in some cases, sentenced to jail.

Applying the same approach in American courts would punish the guilty in both instances: both the criminal who's been caught *and* the officer who violated constitutional rights in apprehending him. Perhaps most important, punishment could be meted out in those cases involving innocent citizens who possess no incriminating evidence—exactly the cases that cry out most for redress. Presently, punishing the police officers who violate privacy usually requires lengthy civil proceedings; for example, a case is still pending against the police department of New Haven, Connecticut, which from 1964 to 1971 wiretapped without legal warrants the phones of 3,000 residents. And in another case—a 1973 drug raid in Collinsville, Illinois, in which federal and local narcotics agents ransacked the homes of two families by mistake—civil suits took more than six years to complete.

Unshackling the IRS

A second area where privacy advocates go astray involves the confidentiality of income tax records. Civil libertarians have long argued that to allow other government agencies to have access to Internal Revenue Service files for such purposes as detecting fraud in benefit programs would violate the privacy of taxpayers. The ACLU, for example, has long fought efforts by the government to condition the award of benefits on a waiver of the confidentiality of income tax records, arguing that such treatment would discriminate against those who must depend on government assistance.

The IRS also opposes disclosure of tax information, though hardly out of a burning passion for civil liberties. Rather, the agency has steadfastly maintained that if citizens knew their tax returns would be made available to other agencies, far more of them would refuse to be truthful or even submit a return. This would undermine the whole principle of "voluntary compliance," the IRS alleges, and make its job that much more difficult.

Unfortunately, this insistence on the sanctity of tax return information also means that American taxpayers are being milked to the tune of billions of dollars a year. For the government's means-tested programs such as welfare and food stamps, tax returns are the best way to verify a recipient's eligibility for benefits as well as detect overpayments. Yet administrators of these programs have virtually no access to IRS records; instead, they must try to verify claims through other, more cumbersome (and often more intrusive) means—inquiries of neighbors, on-site inspections, and, in some states, examination of bank records. (Most states don't allow the latter, though one state that does—Massachusetts—has some of the strongest privacy statutes in the country.) While most recipients are honest, one hint of how many aren't was revealed recently in Pennsylvania when a computer "match" comparing food stamp recipients against wage data submitted by employers turned up 41,000 instances of discrepancies between income reported and the income actually earned. As for the billions in

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delinquent loans—money owed to us, remember—the IRS could do more than deduct delinquent payments from tax refunds. The IRS is also the only government agency that keeps annual tabs on Americans' addresses on any large-scale, systematic basis. Yet the government now can't use tax information to locate the scofflaws who are trying to duck their repayment obligations.

Even when it comes to far more serious crimes, the IRS often isn't much help. For example, the Justice Department frequently would like to examine income tax returns to determine whether a suspected drug dealer reported enough income to justify, say, a Mercedes and 45-foot yacht—and how he claimed to have earned it. Tax information is sometimes available in such circumstances, but under restrictions passed by Congress in 1976 in response to tax abuses by Richard Nixon getting IRS cooperation can be an exhausting bureaucratic battle. By the time help arrives, it may be too late. For example, when the IRS was asked several years ago by a federal drug task force in Los Angeles to investigate a suspect's financial records, it took eight months to get cooperation. Meanwhile, the suspect had time to spirit $6.5 million out of the country to Mexican banks.

In another drug smuggling case, a former Justice Department official recalls the time that the government had tax records in its possession that proved a defendant was lying about his "low income" in asking for a bail reduction. But because of privacy restrictions, the evidence couldn't be revealed at that stage of the legal proceedings. "So the judge granted bail, " the official recalls, "and the defendant promptly fled the country."

The rampant tax cheating that already exists puts the lie to the argument that existing laws about privacy must be preserved intact to protect "voluntary compliance." And in some respects, clinging to this discredited notion actually encourages cheating. The average American intuitively understands a salient fact about the current tax system: so many people hedge and cheat, and get away with it, that those who decide to be completely honest are being played for suckers. The best way to dispel this feeling is a fair and efficient system that has a reasonable chance of apprehending those who cheat. This is a lesson learned in the early 1960s when, over the objections of some worried about the privacy implications, the IRS computerized its record-keeping system that monitors the interest payments made by banks to depositors. In one year, the amount of reported interest income leapt more than 25 percent.

To put it another way, the best way to promote greater compliance with the tax laws isn't more privacy—it's less. That means more computers, not to mention more government employees whose jobs are to look closely at people's tax returns. The IRS currently has just 13,500 revenue agents to conduct audits for 95 million returns, and last year they managed to get through just 1.5 percent of them, an all-time low. The Reagan administration has further endeared itself to would-be tax cheaters by cutting the IRS's enforcement budget. Such economy is pound-foolish and then some, given that every $1 million invested in additional auditors has, historically, returned about 20 times that in recovered revenues. But beefing up the IRS's enforcement staff is hardly a crusade that endears a congressman to his constituents, so little protest has been lodged.

Of course, the larger question about confidentiality of tax information is why it should be so cherished to begin with. One doesn't pay taxes to the IRS; one pays taxes to the entire government, which then divvies up the process among thousands of different programs. Besides, why should taxpayers who make their money legitimately, and fully report it, have any qualms about occasionally being included in a computer program that matches their returns against a list of those on the food stamp rolls? If anything, honest taxpayers should be keenly interested in having the government insure, as best it can, that their tax dollars are being wisely spent.

Unfortunately, too often the government seems interested in doing just the opposite. For example, several years ago the Department of Agriculture compared a list of 750,000 food stamp recipients in Illinois with Social Security Administration files and found discrepancies in 130,000 cases. How many of these were fraudulent applicants, and how many computer errors? The Department of Agriculture never found out. Citing a lack of resources and its concern for privacy, the Social Security Administration refused to classify the errors in any useful way; "What we got was worthless garbage, " says an auditor for Agriculture's inspector general.

Critics of such techniques as computer matching erroneously equate fair treatment for the poor with ensuring that they have the same privacy rights as those who ask nothing of the government. The poor certainly deserve adequate benefits, which many do not now receive. But asking them to sacrifice a modicum of privacy

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in exchange for receiving a substantial government benefit is a compromise that is inconsequential. European welfare systems that allow such information-sharing, for example, are generally more advanced—and, most liberals would concede, more "humane"—than ours.

Indeed, the development of a truly fair welfare system that distributes money on the basis of need depends on ensuring the accuracy of information given by recipients. More than money is at stake; such accuracy is necessary lest the more prosperous citizens who are financing these programs grow disillusioned and withdraw their support. Ronald Reagan's "welfare queens" are far rarer than he and other conservatives like to suggest, but they do exist, as do those who cheat on unemployment, veterans' pensions, small business loans, and other programs. Those concerned with the integrity of these programs should recognize that an exaggerated concern for privacy ultimately undermines the ability to help those who need the government's help.

Mistaken Identities

The third area of concern surrounds proposals that might eventually lead to a "national identification system." Such a system has long been a major bugaboo of civil libertarians; during the mid-1960s, for example, the federal government beat a hasty retreat after the ACLU and other privacy advocates attacked a plan to centralize its computer files. Proposals for a centralized data system are usually described with ominous-sounding terms such as a "national population registry," "cradle-to-grave dossiers," and "internal passports"; several analogies, historical and otherwise, are commonly enlisted in the debate. Among them: Hitler's use of census data to identify Jews for shipment to extermination camps, our own use of census data to detain Japanese-Americans during World War II, and South Africa's reliance on identity papers to police the movement of blacks under apartheid.

The spectre of a national identification system has been most lately raised in connection with the Simpson-Mazzoli bill currently before Congress. This bill proposes a sweeping set of reforms of our current immigration laws, and many have rightly criticized it for being too restrictive, failing to fully appreciate how much new immigrants contribute to our economy. But such defects aside, the bill is a serious attempt to come to grips with the difficult problems involved in enforcing our immigration laws—once they're agreed upon.

A key provision of the bill calls for sanctions against employers who knowingly hire those who reside illegally in the country. To prevent such sanctions from causing employers to simply avoid foreign-looking workers, the bill provides for the development of a centralized identification system that would allow employers to verify a worker's citizenship in a manner similar to a store clerk calling a central clearinghouse to check the validity of a VISA card.

Hispanic groups and many of their advocates oppose employer sanctions altogether, so it is not surprising that they have also attacked the identification system that would make those sanctions possible. Arnold Torres, executive director for the League of United Latin American Citizens, recently told Congress, "Throughout their history Americans have instinctively recoiled from the idea of a government identity document, recognizing that it is fundamentally inimical to democratic traditions." Representative Edward Roybal has characterized the proposal as a first step to "dog tags" and a system similar to one that "Hitler used." Richard Fajardo, a staff attorney for the Mexican-American Legal Defense Fund, says the card would be so convenient that law enforcement officers would not only use it to identify aliens, but would inevitably be selective in whom they queried. "People who are illegal immigrants from Canada wouldn't be stopped; Hispanics would be," he claims.

There is no question that discrimination against Hispanics is a serious problem. But a closer look at the worker identification proposal reveals that the concerns for privacy miss the point. There's a more direct solution to the problem of selective inquiries: simply prohibit law enforcement officials from asking to see the card. As for discrimination, the law requires all employees to present their cards for verification, whether it's the Hispanic agricultural worker or the new law associate at Cravath, Swaine, and Moore. Besides, employers already have dozens of rationales, most of them more effective anyway, not to hire Hispanics—"We need someone who can speak English," "You're not qualified," and "We're not hiring today," being just three of them.

But more important, the card would generally serve to *reduce* discrimination against those who appear foreign but who reside in the country legally. To detect and apprehend illegal aliens, the Immigration and Naturalization Service has traditionally relied on surprise raids on employers—a highly random, discriminatory tactic that far too often results in the detention of American citizens who can't prove their citizen-

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ship on the spot. The card would eliminate the need for such raids. What's more, it would no longer allow an employer to use the excuse of not wanting to risk the INS's meddlesome scrutiny; the legal worker need only show his card.

The American Civil Liberties Union has also leapt into this debate, arguing that the worker identification system is the first step down a very slippery—and treacherous—slope. First comes the card, then the central data bank, then the inevitable push for a national identity card used for a variety of other, and less benign, purposes. Testifying before Congress, John Shattuck of the ACLU warned, "Any form of verification sufficiently reliable to support a fair system of employer sanctions... most certainly will pose a grave danger to civil rights and civil liberties."

What were some of the specific dangers? Shattuck listed several. Such a system would be "useful in apprehending criminal fugitives" and an "invaluable asset" to the Parent Locator Service. (The PLS tracks down fathers who are delinquent in child support payments to mothers drawing public assistance.) It would help "prevent welfare fraud schemes," and would have been useful in allowing the government to "locate Iranian students during the hostage crisis." If the card were specially coded, those who'd defaulted on government loans "might be discouraged from trying to take out new loans before paying off the old ones."

That's right—these were examples Shattuck gave in testifying *against* the worker identification system. The danger, Shattuck said, was that these purposes seem so benign that the government couldn't help but broaden the use of the card, and that this in turn would lead to a "full-blown dossier system," which, by assembling all the government's information about citizens in one place, could enable it to "trace, monitor, and control each individual."

A centralized "dossier" system that could be instantly accessible to anyone with the right computer access code is a disquieting thought. But there's an important distinction that privacy advocates usually overlook when they argue, in effect, that an inefficient government is necessary for the preservation of basic freedoms. Basically, civil libertarians imply that a major difference between a democracy and a police state is whether information can be retrieved at the touch of one button, or whether it takes two days to assemble by rummaging through several dozen different files. But the real difference lies in what the information consists of, and what it's then used for. (See sidebar, page 20.)

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Greve's report on the B-1 bomber detailed Rockwell International's ingenious lobbying strategy. The key was not Washington lobbyists, but voters: by farming out enough work to subcontractors across the country, Rockwell was able to ensure that nearly every senator and congressman had his own B-1 constituency. Every state except Alaska and Hawaii wound up with a piece of the action, and Rockwell got its contract.

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The award for articles published in April will be announced in the July/August issue. Nominations will close May 15. Nominations should be accompanied by two copies of the article or articles.

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This distinction is revealed by a closer look at some of the very arguments used by privacy advocates. The U.S. violated its own laws against the confidentiality of census data to help identify citizens of Japanese ancestry during World War II. Yet who believes the government would have abandoned its plans because it would have taken a little more time—and involved more mistaken identities—without this data? This terrible abuse occurred not because the government misused its information but because our leaders succumbed to racism and an unjustified fear of internal subversion. Likewise, Hoover's assault on civil liberties was certainly made easier by the FBI's ability to gather information. But few of those victimized by Hoover were harmed by the kind of information that might routinely be kept in the centralized data bank usually described by privacy advocates, such as name, Social Security number, current address, date of birth, income tax returns, and a list of government benefits received. Rather, Hoover's outrages resulted from his ability to use agents for already illegal purposes—violating existing privacy laws and fabricating and disseminating information.

> It makes no sense to let a thief go free because his privacy has been compromised in the gathering of evidence. We should send the criminal to jail—but also punish the officer who broke the law in apprehending him.

Even if a worker identification system were modified and enlisted for other uses, there's no reason civil liberties couldn't be adequately protected. Some of the best evidence for that, again, comes from Europe. Every major European country currently issues some kind of national identification card; Sweden, hardly a candidate for Europe's most repressive police state, assigns each child its own number at birth. Such centralized systems have many advantages: they help ensure that government benefits don't go to noncitizens or those ineligible for them, and they allow mistakes that are made in entering data to be recognized and corrected more quickly. Indeed, one of the most common complaints of the ACLU and other groups is that innocent citizens are often victimized by computer errors; for example, an elderly Massachusetts woman was recently cut off from public assistance when a computer match of her bank records erroneously identified her as having too many assets. Many liberals also overlook the fact that a central data system not only can help catch those who cheat on welfare but also can catch corporations who cheat on their taxes or violate government regulations. Some of the most vehement opponents of computerization of government records during the 1950s were businessmen who warned that government would be far more able to prosecute for antitrust violations.

In fact, if Americans are to worry about the government's ability to identify people, they should really worry about its ineptitude, not its chilling efficiency. For example, for all intents and purposes the Social Security number has become a de facto national identifier, used in filing income tax forms and in applying for a host of government benefits. Yet the card is extremely simple to forge, and the Social Security Administration makes almost no effort to cooperate with other government agencies in verifying whether the number given by an applicant is legitimate. (The SSA's own procedures for verification are themselves lax, and when it does identify a "bad" number, it does not notify other agencies that may be paying benefits to the same person.) In hearings held before the Senate's permanent subcommittee on investigations, Newton van Dunen, a convicted forger, testified that he had forged about 100,000 identification documents, and that Social Security cards were so easy to duplicate—a "one on a one-to-ten scale"—that he charged his clients only $30 for one. With the phony cards, those clients—most of them illegal immigrants—obtained driver's licenses and unemployment benefits, and some even filed for income tax refunds from the IRS.

Privacy is hardly so important that the government should be prohibited from effectively identifying those who ask it for benefits, particularly since one's ability to assume a fictitious identity almost never serves a legitimate purpose. Criminal fugitives, for example, now take solace

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in the fact that birth and death records are seldom coordinated; many have assumed a new identity by obtaining a copy of a birth certificate for a dead child who would now be about their age. "One thing that is absolutely incomprehensible to people in other countries is that in the U.S. you do not have to use your legal name," observes Hans Linde, an Oregon Supreme Court justice who recently took part in a seminar on privacy at the Center for the Study of Democratic Institutions. Adds Linde, a former clerk for William O. Douglas and generally considered a liberal, "The ability to shed your identity here is unequalled anywhere in the world."

Starting Over

Of course, being able to overcome one's past mistakes—to start a new life—is also one of the long-standing virtues of American life. As an advisory committee on privacy to HEW observed in 1966, "American culture is rich in the belief that an individual can pull up stakes and make a fresh start, but a universally identified man might become a prisoner of his recorded past." This was the promise of the frontier in the 19th century, and to some extent of the big city today—that in relative anonymity, one can find a way to make amends for past mistakes.

But again, this ability should have its limits. If one applies for a government benefit, society has a legitimate interest in knowing whether you once defaulted on your student loan—and possibly using that information in ways that you do not like. If you aspire to a position of trust, such as being a physician licensed by the state, society has a definite interest in having in its files a record of any past instances of malpractice or Medicare fraud. It's important that government keep such information, even if there's never occasion to use it, for a simple reason: there's no way of knowing ahead of time what might prove relevant. But there are many instances where such information should not be used; a conviction for a hot-blooded murder, for example, should not automatically prevent one from working for the government, and for many jobs—say, computer programming—it should have no effect if the applicant's subsequent life has demonstrated a sincere desire to make amends for the crime.

Still, those concerned that the past can unfairly affect one's future would do far better to focus on matters other than the privacy of government information. For example, federal and state laws generally prohibit anyone convicted of a felony from voting in an election. This prohibition applies as equally to the mass murderer as it does to the adult who was convicted 20 years ago of possessing a half pound of marijuana and has had a clean record ever since. Such second-class citizenship also applies to a wide range of occupations. In most states, a felony conviction not only disqualifies one from the practice of law and medicine, but from a host of other occupations that have strived to increase their "professional" luster by restricting access: morticians, barbers,

What Government Shouldn't Do

If privacy advocates often go astray, they do have legitimate concerns that should be met by specific prohibition on government prying into:

1) political beliefs
2) sexual relations between consenting adults
3) the books, magazines, newspapers, and films that adults read and watch.

The specific nightmare of *1984* should be dealt with by outlawing the use of two-way technology to enable the government to watch us in our homes.

—P.K.

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cosmetologists, and teachers, to name just a few. These strictures, applied indiscriminately, often serve no other purpose than to punish further those who've made amends for a past mistake.

How should society ensure that only relevant information is collected and that once collected it is properly used? Rather than avoid possible abuses by not collecting data, or insisting that it be collected inefficiently, the best guarantor of legitimate privacy rights is swift and sure punishment for those who violate them. During the 1960s, for example, one of the most commonly cited privacy abuses involved private credit companies who denied or revoked credit after interrogating applicants' neighbors about their personal, financial, and even sexual habits. The information was often irrelevant, not to mention wrong, and in response Congress passed the Fair Credit Reporting Act, which required credit companies to give applicants a chance to correct erroneous information in their files. The law also allowed people to sue companies for damages that resulted from such wrong information. Today, few complaints are heard about private credit companies; if anything, they now err too much on the side of awarding credit to the undeserving.

Just as police officers should be subject to quick punishment for illegally gathering evidence, so should government officials who violate the privacy of citizens. To ensure that this approach is meaningful, it is necessary to go beyond the provisions of the 1974 Privacy Act, which gives citizens the right to bring civil suits against the government and provides for the possible prosecution of government agents. Civil suits are time-consuming and costly, and the plaintiff must prove actual injury; criminal suits are now almost nonexistent because those who would bring them and provide the evidence usually work for the same government agency that committed the abuse. Independent government auditors, with broad investigatory powers, should be relied on to enforce this law—an approach that was originally incorporated in the 1974 act but which passed only one house of Congress.

Privacy Uber Alles

Rather than urge the emasculation of government's ability to collect and use information relevant to its duties, privacy advocates should instead focus on ensuring that government is held more accountable when it abuses the privacy of its citizens. But it's self-deluding to think that the proper balance between privacy and society's legitimate interest in protecting itself is simply a matter of keeping the curiosity of government in check. Just as important is restoring a sense of individual responsibility, promoting an awareness among citizens that they are part of a community whose well-being depends on everyone taking an interest in what happens around them. A society in which everyone is preoccupied with their privacy—looking away when their neighbors pass, retreating to the confines of their homes whenever possible, and viewing all strangers as people who might take advantage of them rather than as possible friends—is a society as bleak as any that George Orwell imagined.

Indeed, in an important sense our best defense against Big Brother, or a future J. Edgar Hoover, is to restore privacy to its rightful place in our lives. It is a point recognized by Hannah Arendt, whose book *The Origins of Totalitarianism* is often cited by civil libertarians. One of the major reasons Hitler was able to come to power, Arendt noted, was the long-standing German passion for privacy which led many to ignore what Hitler was doing. The Jewish family down the block that disappeared one night was none of their business; nor were the concentration camps at the edge of town. If one didn't really need to know, one didn't try to know.

It's obviously dangerous to make analogies; the Third Reich is as distant to modern America as Oceania is. Still, it's something never mentioned whenever privacy advocates wax passionately about the importance of the "right to be left alone," though the result—the most systematic and murderous invasion of privacy in the 20th century—is well known to all of us. ■

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Don't be surprised to find more and more people asking for *The Washington Monthly.* Avoid being caught empty-handed. Call Mark Laughlin or Karl Ackerman at (202) 462-0128.

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MEMO OF THE MONTH

OFFICE OF THE U.S. NATIONAL MILITARY REPRESENTATIVE
SUPREME HEADQUARTERS ALLIED POWERS EUROPE
APO New York 09055

USNMR

1 March 1984

MEMORANDUM FOR STEERING COMMITTEE DIRECTORS AND THEME MANAGERS

SUBJECT: Reception Update

1. We are well on our way. Concepts are developing nicely and I feel sure that the positive attitude demonstrated by all concerned are a reflection of the desire to help put on a real success.

2. A couple of points to stress to insure appropriate direction. Attached matrix is our first listing of those responsible for major support areas. It is now essential that steering committee members (listed down the left column) meet with their counterparts from the theme areas to plan detailed support.

a. I want an update weekly from the steering committee chairpersons on the status of requirements. First update will be Monday, 12 March 1984. Prior to that essential areas for decisions are food, beverages, entertainment and decorations. For the 12 March meeting to be successful, chairpersons must meet with their committees.

b. Major Readman is scrubbing last reception's purchase requests for common items of equipment and food. Consolidated requests will be discussed at the meeting and submitted on Tuesday, 13 March 1984.

3. I am excited as I know many of you are. The transition from concept to production is generally the most difficult. I need the support of all of you, especially senior United States officers in the various divisions and organizations to lend emphasis to the importance of the evening. The volunteer spirit of United States officers and spouses will determine our success. I intend to succeed.

1 Incl
as

CHARLES W. RICHEY, JR
Colonel, US Air Force
United States National
Military Representative

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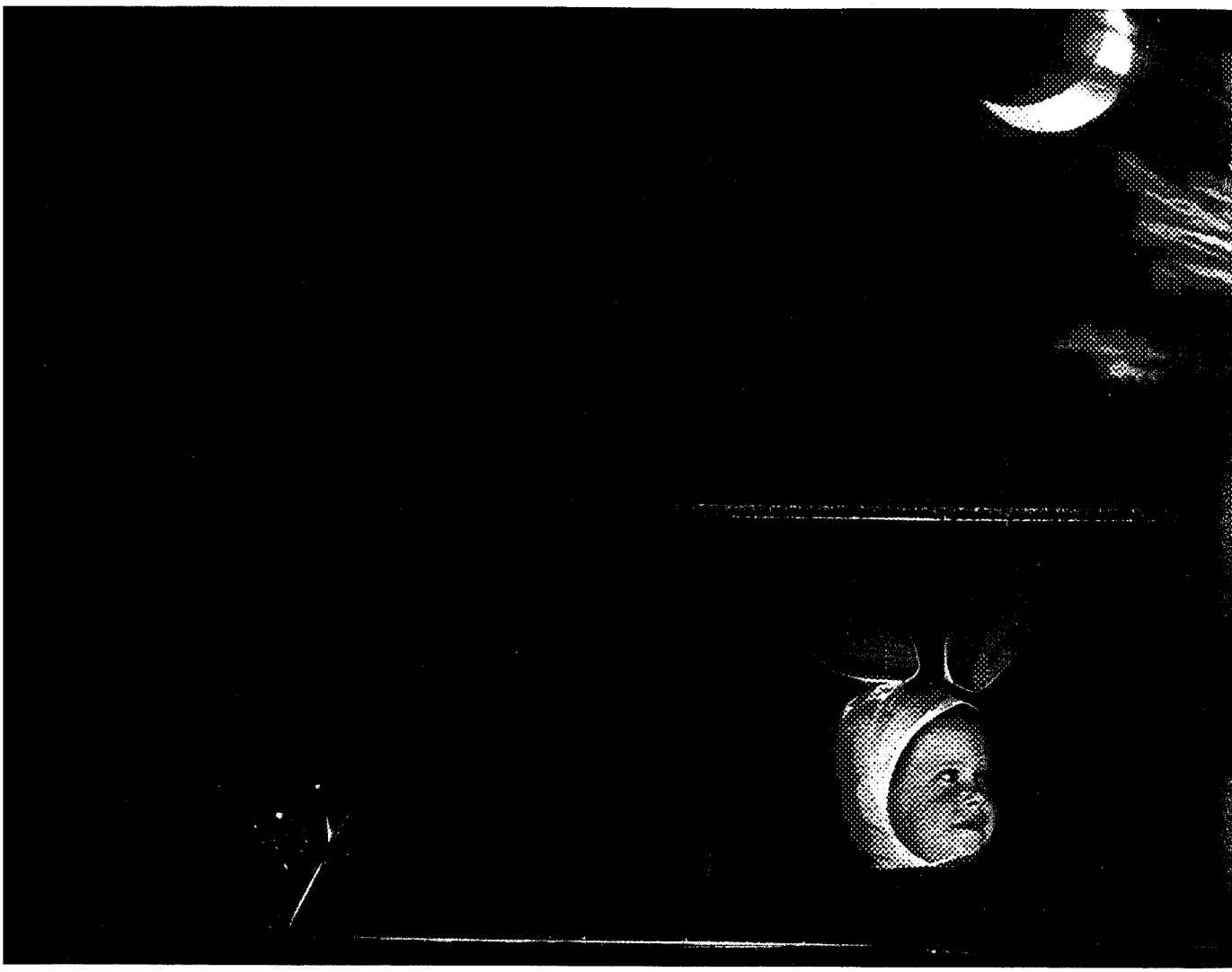
A REASSURI



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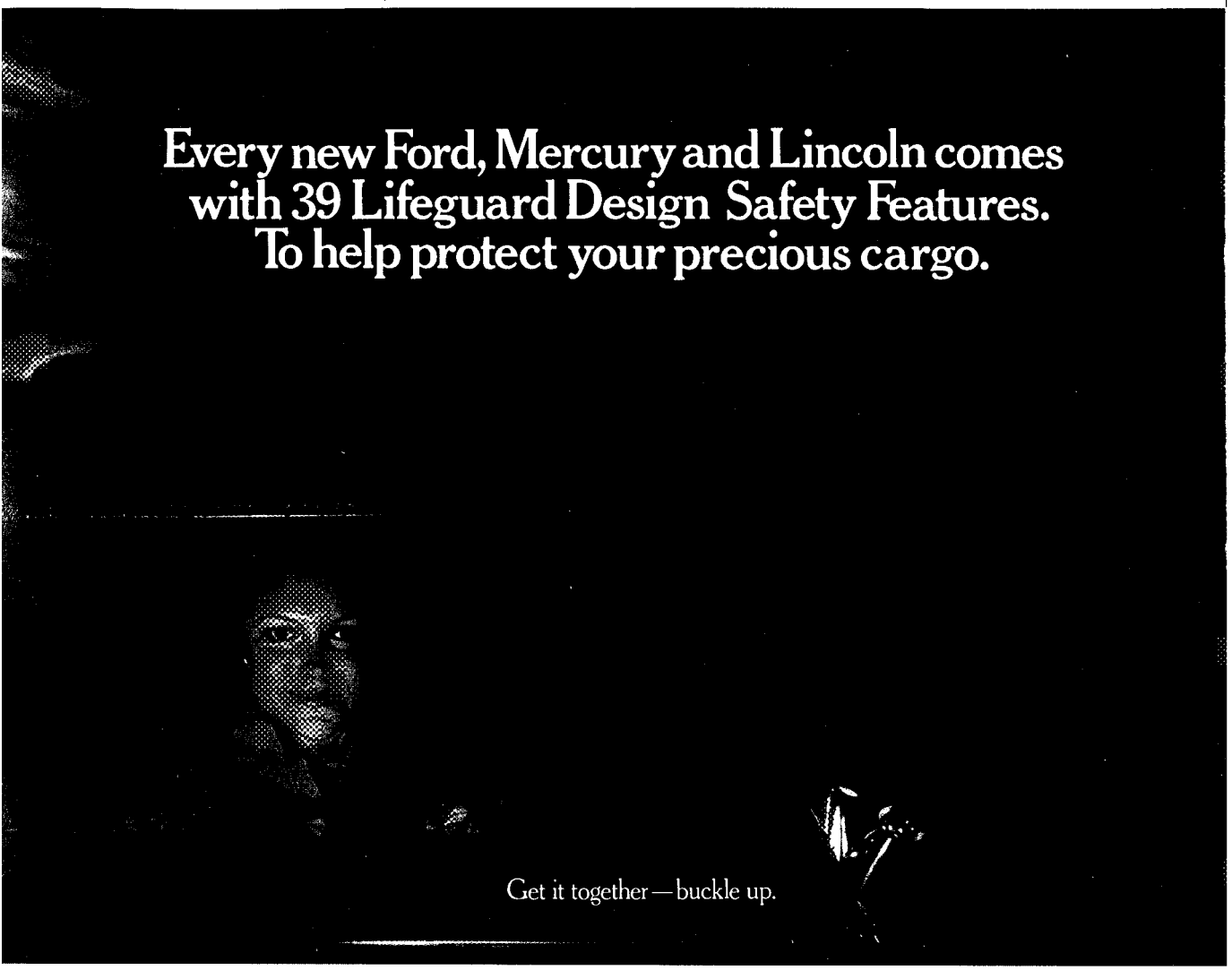

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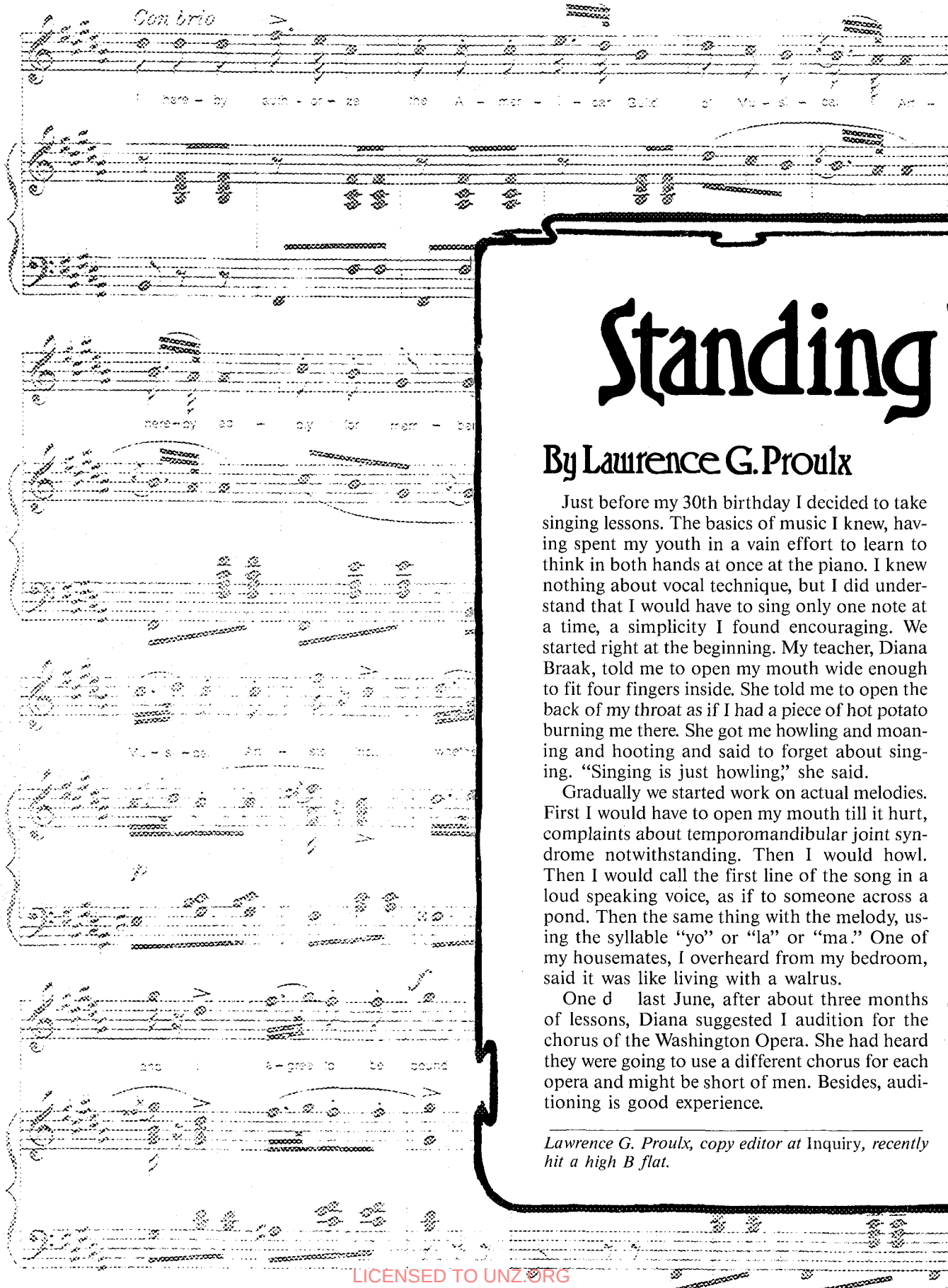

Standing

By Lawrence G. Proulx

Just before my 30th birthday I decided to take singing lessons. The basics of music I knew, having spent my youth in a vain effort to learn to think in both hands at once at the piano. I knew nothing about vocal technique, but I did understand that I would have to sing only one note at a time, a simplicity I found encouraging. We started right at the beginning. My teacher, Diana Braak, told me to open my mouth wide enough to fit four fingers inside. She told me to open the back of my throat as if I had a piece of hot potato burning me there. She got me howling and moaning and hooting and said to forget about singing. "Singing is just howling," she said.

Gradually we started work on actual melodies. First I would have to open my mouth till it hurt, complaints about temporomandibular joint syndrome notwithstanding. Then I would howl. Then I would call the first line of the song in a loud speaking voice, as if to someone across a pond. Then the same thing with the melody, using the syllable "yo" or "la" or "ma." One of my housemates, I overheard from my bedroom, said it was like living with a walrus.

One d last June, after about three months of lessons, Diana suggested I audition for the chorus of the Washington Opera. She had heard they were going to use a different chorus for each opera and might be short of men. Besides, auditioning is good experience.

Lawrence G. Proulx, copy editor at Inquiry, *recently hit a high B flat.*

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Up to the Fine Print

So three weeks later, I found myself sitting with a few other men at the Kennedy Center, listening to the faint sound of singers doing their arias behind the door of the rehearsal room. When the call came I followed Chorus Master William Huckaby into the room. The panel of high-nosed experts I had expected wasn't there; we were alone with the Yamaha upright. I sang "Per la gloria d'adorarvi," from everybody's first aria book, and "Where E'er You Walk," from Handel's opera *Semele*, which Mr. Huckaby graciously offered to transpose down to C major for me. He let me sing about half of the first and two lines of the other. My low notes (I'm a bass) were fine, but I still had a lot of work to do on the top. He asked who my teacher was and what sort of exercises she was having me do to help open up the head tones; I demonstrated some of my howls and hoots. He asked if I was a member of AGMA (the American Guild of Musical Artists) and told me I'd have to join in order to sing with the company. And that was it. He hadn't said I definitely had made it, but I left that place high as a coloratura.

A month and a half later, my intercom at work buzzed. Addice Thomas was calling from the Kennedy Center. I tried to sound professionally casual. Hello. Yes, I was still interested. No, I didn't believe I had any conflicting obligations. Of course I'd be willing to join the union—whatever's necessary. She told me that I'd earn $6.16 an hour for rehearsals and $49 each for the five performances of *Rigoletto*. While I'd have done it for free, there was something very satisfactory about getting paid; it made me, however prematurely, a pro. As soon as the phone clicked I barked with joy and filled my fellow workers in on the news. I'm singing at the Kennedy Center! They were justifiably incredulous. You mean at the entrance with your hand out?

Shop talk

I called up the AGMA representative in Washington, an attorney by the name of Joshua Kaufman. He was polite and friendly, explained some things about wage rates (after a year I'd be paid a bit more), and told me that I'd have to give the union $100 as an initiation fee and about $40 in annual dues. I don't suppose I have any choice about this? I asked, jestingly. No, he answered, but there were many ways in which the union benefited its members, as I'd see from the booklet he would send along with the union's application form. He told me to feel free to call if I had any questions.

A few days later there was an envelope in my mailbox with "The Washington Opera" in the upper left-hand corner. Inside was my contract—a magnificent, wholly convincing document, with writing in over a dozen type styles and sizes in white-green-pink triplicate. At the top of the pink copy were the two words, in bright red, "ARTIST'S COPY," and I liked the ring to that. Just below were the largest words on the page, "American Guild of Musical Artists," with the union's Broadway, New York, New York, address; somehow that address proved the whole thing's show-biz authenticity. The first page stated the basic contract between the opera company and me, what I would do when, and what I'd be paid.

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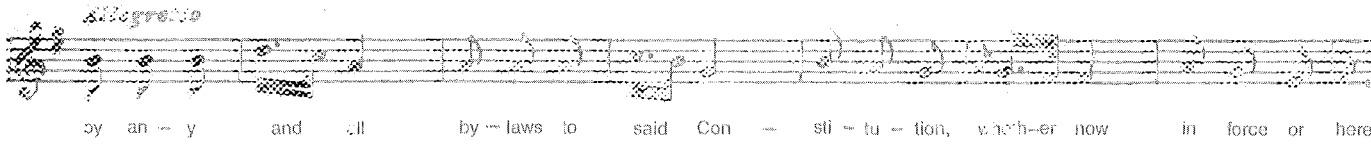

On the back there was a lot of small print that seemed like irrelevant legal technicalities. A few things caught my eye, though. For instance: "The ARTIST hereby warrants that he is a member of AGMA in good standing and that he will remain so for the duration of this contract, and the ARTIST and the EMPLOYER hereby jointly and severally agree that the ARTIST's obligations hereunder are subject (1) to the ARTIST's prior obligations to AGMA as a member thereof, and (2) to AGMA's Constitution, By-Laws, and Rules and Regulations as they now exist or as they may hereafter be amended."

Well, the opera people knew I wasn't already a member of the union, but what were my "obligations to AGMA as a member thereof"? I didn't know. There was also a warning in the box headed "IMPORTANT": "All AGMA RULES which are in force at the time this contract is entered into are part hereof. The EMPLOYER and the ARTIST should keep themselves advised of AGMA RULES posted on the bulletin board in the AGMA office. The Basic Agreement between AGMA and the above Employer may contain modifications of the Standard Agreement. Check with AGMA before you sign this contract."

I didn't like this at all. This contract clearly bound me to a lot of bylaws, rules, and regulations I didn't even know. And I couldn't know them all, since the contract bound me to them "as they may hereafter be amended." It seemed like they were asking me to agree to an awful lot just to sing in one opera.

The people I work with at *Inquiry* magazine, a libertarian monthly, certainly had an opinion about unions: unions are illegitimate organizations to the extent that they get power through unfair laws or intimidation; they help their members at the expense of consumers and nonunion workers. When I showed them the contract they said, Well, that's the way unions work. If you don't like it, why not call the Right to Work Committee? Headquartered in Virginia, the committee propagandizes against compulsory unionism and provides free legal support to workers who resist joining. Its motto, I assumed, was *Divide ut regnes*. Still, it wouldn't hurt to call.

The Right to Work lawyer hadn't listened to more than a couple of words of the contract before he interrupted with, "That's an illegal contract." He went on to say that, assuming this contract was not exempt from the provisions of the National Labor Relations Act of 1935 (the Wagner Act), as are contracts of workers in railroads, agriculture, domestic service, and a few other fields, its saying that "the ARTIST warrants that he is a member of AGMA in good standing" made the company, in effect, a "closed shop," which the law forbids. "Union shops" are legal, he said, making what to me seemed a fine distinction: in a union shop a worker must join the union within 30 days of hire. But even this requirement had been interpreted by the courts to mean simply paying an initiation fee and periodic dues. So the requirement that I join the union wasn't enforceable. He suggested that I cross out the clause and write in that I intended to be an "agency fee-payer," that I would pay them what the law required, but that I would not become a member.

I thanked him for his advice but didn't take it. This opera job was an extraordinary bit of luck for me. I was barely qualified for it. I didn't want to start off with a wrangle over legal technicalities. I disliked the terms, but I decided to sign the contract. I wanted to get it back to the company before they changed their minds.

Sign for your supper

The moan, or grunt, Diana was telling me, is the basis of support for the howl. Lift a heavy box and you'll find your abdominal muscles contracted very nicely for making a loud sound; their action in singing is similar. Trouble was, the more moan I got, the less the sound resonated in my head, and integrating head tones into my usual pure chest voice was our principal goal. So we would forget about the support for a while, and I'd sing five-tone scales in falsetto. Then we'd modify the falsetto into a soft, breathy hoot. And sometimes we could take that one step further and combine the hoot with the chest voice. That integration was the goal. It might take a year to learn, maybe longer, maybe less, but it was fundamental. And after that, of course, one still had to learn to sing music. Diana was full of encouragement: "The whole process takes about seven years."

Meanwhile, a union application form arrived from Joshua Kaufman. The words of the application took me somewhat aback: "I hereby apply for membership in the American Guild of Musical Artists, Inc., and agree to be bound by each and every provision contained in the Con-

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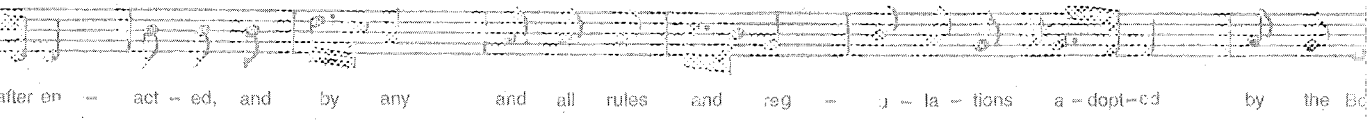

stitution of the American Guild of Musical Artists, Inc., by such amendments to said Constitution as may hereafter be made, by any and all by-laws to said Constitution, whether now in force or hereafter enacted, and by any and all rules and regulations adopted by the Board of Governors of the American Guild of Musical Artists, Inc., whether now in force or hereafter amended, enacted or adopted. I agree that the said amendments, by-laws, rules and regulations are binding upon me as of the date of their lawfully taking effect, regardless of the rights, if any, vested in me prior to such date.

"I hereby authorize the American Guild of Musical Artists, Inc., to be my exclusive agent for collective bargaining purposes in any matter dealing with Opera, Concert, Recital and Ballet or in any other matters within the jurisdiction of the American Guild of Musical Artists, Inc."

I'm no lawyer, but whoa! there sure was a mouthful of agreements piled into those three sentences. "...each and every provision..."? "...whether now in force or hereafter enacted..."? "...regardless of the rights, if any, vested in me prior to such date..."? Well, it was still only early August; rehearsals weren't to begin until September 26. No need to rush things.

I worked hard on my voice lessons that next month, knowing that the opera, once begun, would be a distraction; there would be new music to learn, words to memorize, entrances, exits, and cues to get down. I was slowly learning to keep the soft palate high and the larynx low, without balling up the tongue in the back of my mouth. Diana said that, as with many students, jaw tension and tongue tension were my two biggest obstacles. As long as they were present there would never develop a good, consistent tone, nor could vowels or consonants be clearly made. Stretching was the most important prescription. There was also an exercise for separating the movement of the tongue from the jaw—making repeated "la" sounds, without biting at all, in eighth notes, eighth-note triplets, then sixteenth notes. Ideally the generation of the sound, in the larynx, would become entirely independent of the shaping of the sound, in the mouth.

My two housemates had grown accustomed to the sound of my practicing every day as they prepared for work. And my friends at the magazine tolerated a lot of it, though I once was asked to cut it down right after a visit from a member of the board of directors. I had settled into a comfortable routine, was thinking about investing in a stereo, and coming to regard 1990, the seven-year mark, as not really so far away after all.

But as September rolled around I started thinking more and more about that application form. It wasn't the idea of joining a union that bothered me, but the arrogance of the agreement, which the union seemed to assume no one would ever bother to read. Such arrogance is nothing unusual: think of the elaborate agreements we make when we buy ourselves an insurance policy, take out a bank account, or ride on an airplane. In each case, we sign our names to documents that contain all sorts of conditions that we scarcely, if ever, take the time to notice. And yet these agreements can affect our lives in profound ways.

The union was asking, in effect, for a blank check. They wanted me to sign myself over to them completely. If I were buying a house, I certainly wouldn't sign a mortgage agreement stating I'd be bound by whatever terms the banker cared to add later on. I don't know who would. I wanted to sing; I was grateful for the chance. I was willing to pay them the money. But did I also have to join an organization whose future claims upon my loyalty seemed so broadly defined?

On September 12, two weeks before rehearsals were scheduled to begin, I called the National Labor Relations Board and talked to Angela Anderson, a resident officer. She told me that all the union could legally require was an initiation fee and dues, so long as its basic agreement with the opera company fell under the jurisdiction of the National Labor Relations Act. While she was nearly certain that it did, she told me that I should make sure by getting a look at the agreement's "union security" clause. Either the AGMA office or the opera company could show it to me.

I then called Joshua Kaufman and asked if I could get a copy of the union's constitution and basic agreement. "Why would you want them?" he asked, sounding puzzled; no one had ever asked him for them before. "Well," I said, "the application says I'm agreeing to all these things, and I don't even know what they are; would you sign a contract without knowing its terms?" This he found reasonable. He recommended that I call the New York office for a copy of the constitution and advised me that the "letter of modification" would probably be more informative than the basic agreement itself.

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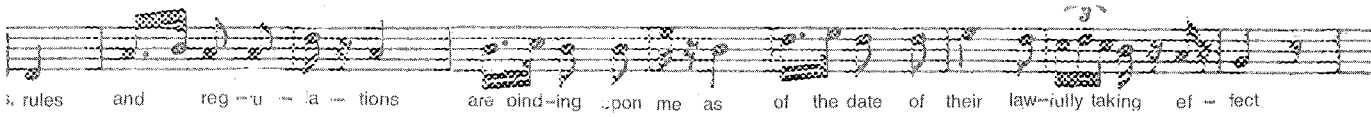

Since he'd been agreeable this far, I decided I might as well tell him that I was reluctant to sign the application. Suppose I paid the money without actually joining the union. "You can't sing without joining the union. . . . It's a closed shop," he said. The Washington Opera couldn't hire anyone who wasn't a member. "But doesn't this come under the National Labor Relations Act?" I asked. "Of course," he said. Well, a woman at the NLRB told me that courts had ruled that only payment of dues could be required. He said that was only in states with right-to-work laws and the District of Columbia has no such law. If I just sent in my check and indicated that I refused to agree to the union's rules, he said he imagined the union would go to Mr. Gary Fifield, the company's managing director, and tell him I was not a member in good standing and that Mr. Fifield would then dismiss me. He pointed out that the basic agreement between the company and the union said that all chorus members had to be "members in good standing"—it didn't just say that they had to pay dues.

The next day I called the NLRB again and spoke to a friendly staff attorney who told me that only failure to tender fees and dues could justify dismissal, so long as the National Labor Relations Act covered it, which it probably did. But, to make sure, he said, I should get a look at the union security clause of the basic agreement. I then called AGMA and had them send it to me. And following Kaufman's advice, I also asked for a copy of the constitution; the woman I spoke with insisted that they don't give it out until they receive the application. She did agree to send me a copy of the basic agreement; as for the letter of modification, she said they didn't have many copies but she'd send one if she had any extra.

By Friday, September 16, I was very discouraged. Rehearsals were to begin in just over a week, a week I had long planned to spend on vacation at my parents'. A decision had to be made. Kaufman had told me the union would protest if I didn't sign the application form. The NLRB and the Right to Work Committee had told me I probably didn't have to sign, but it all depended on what the basic agreement's union security clause said. If it came down to signing or not singing, I knew I wouldn't give up the job. I wanted to sing, and I didn't want to gamble on what the NLRB thought probable. I felt sadly resigned to my approaching surrender.

Almost resigned, I decided to try the Right to Work Committee again. I was put through to Jeff Wedekind, one of the attorneys of their Legal Defense Foundation. I told him my situation. "You can be required to pay dues," he said, "but that is all." The National Labor Relations Act certainly covered the matter. He suggested that I write to the union and say that "I do not agree to formally become a member." We talked some more, and as I told him of my conversation with Kaufman he interrupted me: "Theoretically, you could call the NLRB and file a complaint right now, because Kaufman had no right to suggest that you'd be fired if you didn't sign the application form." He read to me from a Supreme Court case: "Under the second proviso to Section 8 (a) (3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues." Though workers can be required to pay, every worker has the freedom to choose whether or not to join a union.

At Wedekind's suggestion, I wrote a letter to AGMA headquarters in New York, recounting my conversation with Kaufman and my objections to his remarks. Here's my check for the initiation fees and dues, I wrote, and let's not have any more trouble. I let them know that I thought it was unsporting of them to refuse to show me their constitution even as they insisted I agree to abide by it.

After I mailed the letter, though, I started to think about how much I'd relied on the unchecked advice of someone I scarcely knew. I had wagered my operatic future—well, who knows?—on a Supreme Court case I'd never even read. I saw no more reason to trust the Right to Work Committee than I did to trust the union; I wasn't going to be the sacrificial lamb for anybody's ideology. I wanted to read for myself what the law said my rights and responsibilities were. First order of business, then, for my own peace of mind, was to see that case. Fortunately, the Library of Congress is close by my office.

National Labor Relations Board vs. *General Motors Corporation* (373 U.S. 734, 1962) dealt with a different labor issue altogether. As I read it I started to fear the worst: Had I been misled by anti-union fanatics into throwing away the chance of a lifetime? I kept reading, seeing no relationship there to my case, when all of a sudden a dictum appeared out of the blue: "If an employee in a union shop unit refuses to respect

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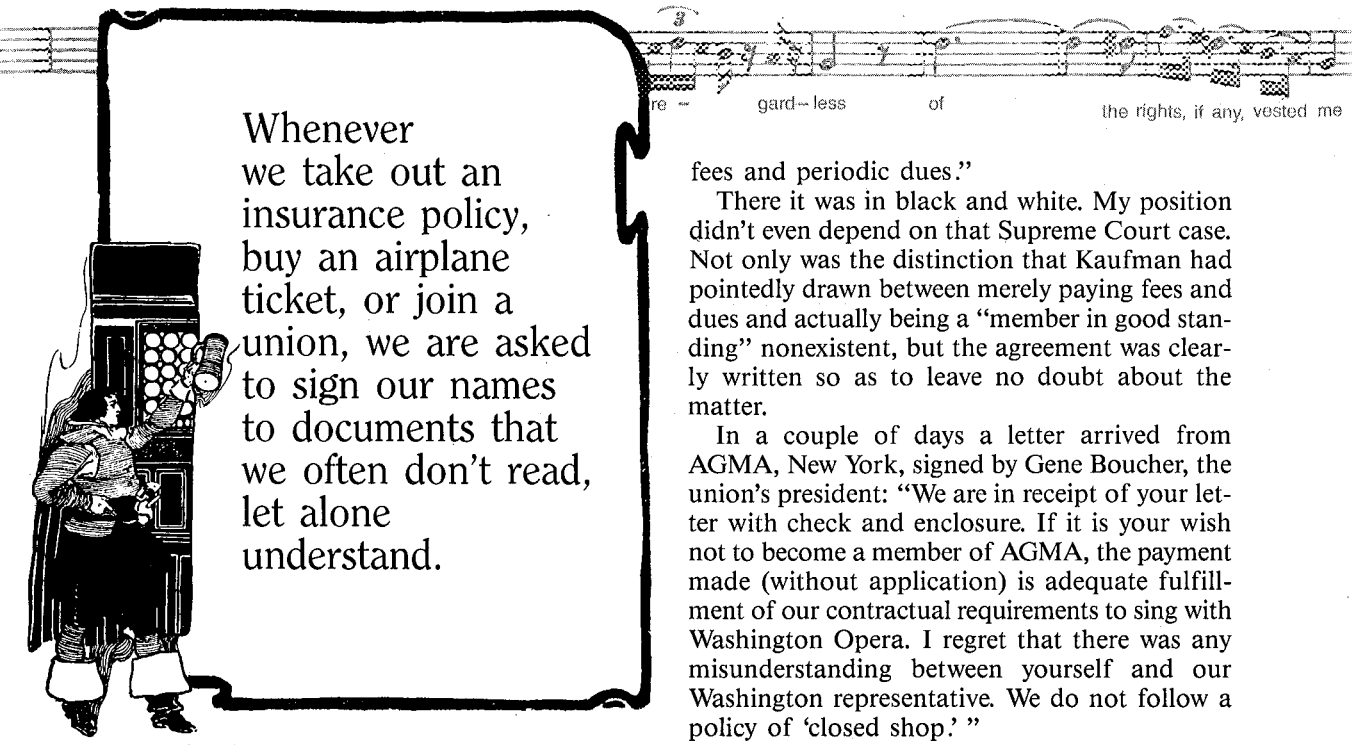

any union-imposed obligations other than the duty to pay dues and fees, and membership is therefore denied or terminated, the condition of 'membership' for Section 8 (a) (3) purposes is nevertheless satisfied and the employee may not be discharged for nonmembership even though he is not a formal member."

Here, in a decision 21 years old, was unequivocal, explicit contradiction of Kaufman's statements. Either he had been ignorant of the law, or he had lied to pressure me into joining. Whichever, it now seemed that I had little to fear from AGMA.

I was in Rhode Island the following Tuesday when a long-distance call came from one of my housemates. A large envelope had arrived from the union headquarters containing a copy of the basic agreement. Another envelope contained a short letter from Kaufman: "I received your letter September 16, 1983. [Sic.] In it you totally misconstrued the informal conversation we had, and thoroughly misrepresented my statements, as well as the union's position." When I returned to Washington I took my first look at the union security clause, the cause of so much of my insecurity two weeks before: "All employees covered by this agreement and hired on or after the date this agreement is executed shall within thirty (30) days following the beginning of such employment, become and remain members in good standing of AGMA."Membership and Good Standing as used in this paragraph shall mean the tender of AGMA's uniformly required initiation fees and periodic dues."

There it was in black and white. My position didn't even depend on that Supreme Court case. Not only was the distinction that Kaufman had pointedly drawn between merely paying fees and dues and actually being a "member in good standing" nonexistent, but the agreement was clearly written so as to leave no doubt about the matter.

In a couple of days a letter arrived from AGMA, New York, signed by Gene Boucher, the union's president: "We are in receipt of your letter with check and enclosure. If it is your wish not to become a member of AGMA, the payment made (without application) is adequate fulfillment of our contractual requirements to sing with Washington Opera. I regret that there was any misunderstanding between yourself and our Washington representative. We do not follow a policy of 'closed shop.' "

Well, it just goes to show you. Sometimes it pays to talk back. I suspect that far too often in life we agree to do things simply because no one expects us to read the fine print. I had no grudge to bear against AGMA. But whether through clumsiness or callousness, they had just asked for too much from me in that application form. Fortunately the law was on my side. My modest victory had saved me a bit of self-respect, and I doubt it cost the union anything at all.

The last detail to record is that on the evening of the first rehearsal, Joshua Kaufman was introduced to the members of the *Rigoletto* chorus to conduct an election of two representatives. He started explaining that all singers had to join the union, corrected himself, and said that "technically" all you had to do was pay fees and dues. So, if anyone had a "philosophical problem. . . by the way, is Larry Proulx here?" I raised my hand. You are not a member, right? Unsure of his intention, I answered that I had paid my fees and dues already. Then he said he just wanted to make sure that I didn't vote in the election if I wasn't a member. He turned back to the group: "You see, some people do have philosophical problems. . . ." The voting took place and he left, and a delightful two months of rehearsals and performances began, during which no one once mentioned my "philosophical problem" again. Ingvar Wixell, Denes Gulyas, Elizabeth Knighton, and I moaned and howled every night to full houses and appreciative reviewers. ■

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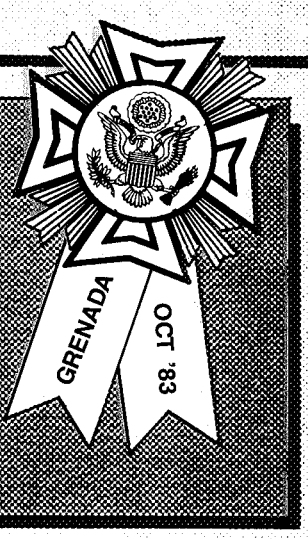
TIDBITS AND OUTRAGES

But of course, they're used in diet cola.

The attorney for Ronald C. O'Bryan, who was executed by injection on March 31, had sought a stay from the U.S. District Court in Washington, D.C. on the grounds that the drugs to be used for the execution had not been approved as safe and effective by the FDA.

A food service specialist in Fairbanks, who was left off the list, is filing a complaint with the Merit Systems Protection Board.

The Army awarded 8,612 medals to Americans involved in the invasion of Grenada. Seven thousand soldiers and enlisted sailors participated in the invasion.



They are worried, however, that the FTC may make them substantiate their claims.

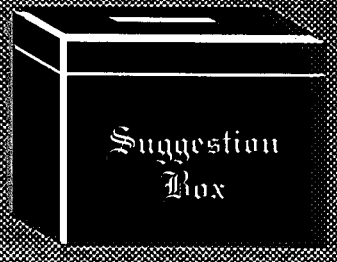
Paul Harper, the immediate past chairman of the American Association of Advertising Agencies, recently observed that "a significant portion of the American public feels that advertising—on television especially—is exaggerated or misleading." To remedy this problem, the trade group has launched an advertising campaign.

Next month they're doing an analysis of a stool sample.

Congressional testimony from Paul Volcker recently was taped by a reporter for a financial newsletter and subjected to a voice-stress analysis. The newsletter reported that the analysis showed Volcker wasn't as worried about inflation as he let on, and might loosen up the money supply in the spring.

Salvation guaranteed or your money back.

A Florida [illegible] recently [illegible] on the "God Box," which is available for $14.95, postpaid. The box [illegible] the money [illegible] directly to God's care," a company spokesman said. "You simply write your problems or desires on a pre-printed prayer sheet, drop the prayer in the box, and let God take over."



They'll settle for custody of the placekicker.

J. Robert and Mildred C. Sachse of Towson, Maryland, have filed a $30 million class-action suit against Robert Irsay, owner of the Baltimore Colts, for moving the football team to Indianapolis. The couple's grounds for the suit are "severe emotional distress."

Who says it's not a contact sport?

Tennis star Vitas Gerulaitis has established a special foundation that last year sponsored tennis clinics for 30,000 children and gave away 12,000 tennis racquets. "The idea is to introduce kids to tennis because it's a lifetime sport and a great way to meet people and make contacts," Gerulaitis told *The New York Times*.

Apple and IBM have dispatched salesmen to Chino and Sing-Sing.

Duncan McKenzie, a convict in Montana, recently had a personal computer installed in his six-by-nine-foot cell to keep track of his appeals. "Since I do a lot of legal work both on my appeal and in other areas of legal research, I have a rather large amount of material here in my cell," he explained in a letter to the *Great Falls Tribune*.

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Why Liberals Should Hate the Insanity Defense

"It's the fallacy of your legal system," said Gary Trapnell, a bank robber who not long afterwards would hijack a TWA 707 flying from Los Angeles to New York. "Either the man falls under this antiquated psychiatric scheme of things, or he doesn't." Trapnell was talking about the insanity defense, which he had used with great acumen to avoid jail for his innumerable crimes over the years. "I have no right to be on the streets," he added.

The insanity defense has been much in the news of late. We read cases such as that of the Michigan ex-convict who pleaded insanity after seven killings, won an acquittal, but returned to the streets two months later when he was declared sane. In a month, he was charged with murdering his wife. Or take the 23-year-old Connecticut man who left the state hospital three months after an insanity acquittal for stabbing a man. The acquittee's mother pleaded to have him recommitted, but to no avail. Shortly thereafter, he repeatedly stabbed a man whose home he was burglarizing. Once again he was declared not guilty by reason of insanity.

It sounds like the warmup for a right-wing tirade against the coddlers of criminals. But the much publicized trials of John Hinckley and others have cast the issue in a somewhat different light. In a strange way, by jumbling liberal and conservative loyalties, these have made debate on the subject not only necessary, but possible as well. Take the "Twinkie Defense," which enabled former San Francisco City Supervisor Dan White to get off with a light eight-year sentence after shooting, with obvious deliberation, San Francisco Mayor George Moscone and his city administrator, Harvey Milk. As Milk was both liberal and openly homosexual, thousands who probably never before identified with the cause of law and order were outraged that this brutal act of (at least symbolic) homophobia should go lightly punished. John Hinckley, for his part, was the son of a wealthy upper-middle-class family, and not the sort of fellow who evoked sympathies usually reserved for the downtrodden. His trial prompted even *The Nation*, which rarely concedes the cops an inch, to suggest some mild reforms in the insanity defense.

Jonathan Rowe is an editor of The Washington Monthly. *Kay L. Gunderson provided research assistance for this article.*

BY JONATHAN ROWE

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In the wake of the Hinckley trial, a number of reforms have been suggested. *The Nation*, along with many others, advocates that we put the burden of proof upon the defendant. (In the Hinckley case, the prosecutors actually had to prove him sane, which is no mean feat.) Others have called for a tighter legal definition of insanity itself. Such changes might be helpful, but they amount to fiddling. The only way to resolve the injustices of the insanity defense is to do away with it entirely. This may sound cruel, but it is not. Nor is it a proposal to "lock 'em up and throw away the key." To the contrary, the injustices of this defense go much deeper than a few criminals getting off the hook. They go close to the core of our current practices regarding punishment and correction. Getting rid of the insanity defense would help to make us confront the need for humane reform in the way we sentence and confine those who break the law.

Such a deal

The insanity defense looms a good deal larger in our minds than it does in actual life. Somewhere between 1,000 and 2,000 criminals make use of it each year, or about 1 percent to 2 percent of felonies that go to trial (over 90 percent in many jurisdictions are plea-bargained before trial). The issue is important not because it arises frequently, but because it tends to arise in the most serious crimes: think of Son of Sam, for example, or the Hillside Strangler. Such people tend to be dangerous, and their trials attract so much publicity that they put our entire system of justice to a test. What single event of the last two years affected your view of the criminal justice system more than the Hinckley trial did?

It is hard to read about such trials without getting the impression that something is fundamentally wrong. Take the case of Robert H. Torsney, the New York City policeman who shot a 15-year-old black youth in the head from two feet away in November of 1978. In an article in the *Journal of Legal Medicine*, Abraham Halpern, director of psychiatry at the United Hospital, Port Chester, New York, tells the case in salient detail.

At first, Torsney's lawyer resisted any suggestion of psychological observation or treatment for his client. Such treatment for an officer who was only acting in the line of duty was "worse than putting him in the electric chair," the attorney said. As public indignation rose, however, and acquittal became more and more unlikely, the attorney decided that Torsney might have deep-seated psychological problems after all. At a hearing on Torsney's insanity defense, his paid psychiatrist explained the policeman's errant account of the incident, which was contradicted by other witnesses as an "involuntary retrospective falsification." Not a lie, mind you. The psychiatrist went on to explain that Torsney shot the kid because of an "organic psychomotor seizure" arising from a "mental defect."

The jury found Torsney not guilty by reason of insanity. After a year, however, the staff at the mental hospital recommended that he be released because they could find nothing wrong with him. When the lower court balked—such hasty releases are unseemly if nothing else—Torsney's attorney indignantly filed an appeal. "It can't be seriously argued," he wrote, "that the record in this case establishes that Mr. Torsney is either seriously mentally ill or presently dangerous. At most he may be said to have a personality flaw, which certainly does not distinguish him from the rest of society."

What really distinguished Torsney, it seemed, was that he had shot somebody and deserved to be punished. That such simple observations can become so obscured is largely the result of the wholesale invasion of psychiatry into the courtroom that has been underway since the 1950s. Back then, the stars of psychiatry and psychoactive drugs were shining bright. To many, we were on the threshold of a new age, in which psychiatrists could measure such things as responsibility and mental disease down to minute calibrations and effect cures with the precision of engineers. If only we could let these new wizards into the courtroom, to bring their expertise to bear upon the processes of justice.

The main opening came in 1954, when federal appeals Judge David Bazelon, of the Washington, D.C., District Court, declared the so-called "Durham Rule." Under the old "M'Naughton Rule," a criminal could be judged insane only if he or she didn't know right from wrong. This crimped the psychiatrists somewhat, since they tend to shrug their shoulders on questions of values. In the *Durham* case Judge Bazelon set them free, declaring that henceforth in the District of Columbia an accused was not criminally responsible "if his unlawful act was the product of mental disease or defect." Bazelon received a special award from the American Psychiatric Association, but not everyone was that enthused. The American Law Institute (ALI) produced a sort of compromise, declaring that a person wouldn't be responsible for a misdeed if he couldn't appreciate the wrongfulness of it or if he "lacked a substantial capacity... to con-

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form his conduct to the requirements of the law." Though somewhat stiffer on paper, this ALI rule didn't vary from the Durham Rule in practice all that much. Adopted by a majority of the states, its various permutations have given the psychiatrists virtual free rein in the courtroom ever since.

The psychiatrist told the jury the reason White snuck through a basement window before he shot the mayor and city administrator was his deep concern for others: "He didn't want to embarrass the officer who was operating a metal detector."

The Hinckley trial demonstrated what the heavenly city of courtroom psychiatry has become. Three teams of psychiatrists—11 in all—picked over Hinckley's mind for hours in an exercise that 200 years from now will no doubt seem much the way that the heated debates over the medieval heresies seem to us today. The resulting trial dragged on for 52 excruciating days. One defense psychiatrist, Thomas C. Goldman, told the jury with a straight face that Hinckley saw actress Jody Foster as an "idealized mother who is all-giving and endowed with magical power," while President Reagan was an "all evil prohibitive figure who hates him, seeks to destroy him, and deny access to the idealized mother figure." No wonder he tried to shoot the man.

Or take the comments of Richard Delman, a psychiatrist who testified for the defense in the Dan White trial. As Lee Coleman, also a psychiatrist, tells it in his new book, *The Reign of Error*, Delman concluded on the basis of inkblot and other tests that it was White's deep concern for others that led him to sneak into San Francisco City Hall through a window rather than walk in through the front door. "He didn't want to embarrass the officer who was operating the metal detector [and would have discovered his gun]," Delman said.

On at least one occasion this kind of analysis has been more than even the defendant could take. Coleman cites the case of Inez Garcia, who was raped by two men in Soledad, California; afterwards, she went home, got a rifle, and shot one of her attackers. At her trial she sat listening to defense psychiatrist Jane Olden go on and on about her "reactive formations" and her self-image as a "saint-like idealized virgin." "If you trigger her negative feelings, which would be provoked by such an act as rape," Olden explained, "being a hysterical person who was striving always to express this sensuality and aggression, then you could indeed throw her into a state where she is emotionally relating to her own conflict."

Garcia stood up and yelled at the judge, "I killed the motherfucker because I was raped and I'd kill him again."

If you smell a fish in such psychologizing, it is with good reason. There is a cadre of so-called "forensic psychiatrists," who show up in these insanity trials again and again, plying their offensive or defensive specialties. Dr. Alan Stone of Harvard, former head of the American Psychiatric Association, describes the kind of trial that results as a "three-ring circus, in which lawyers are the ringmasters and the psychiatric witnesses are the clowns, and if they are carefully trained, then they will be trained clowns." Another Harvard psychiatrist, David Baer, was a defense witness in the Hinckley trial but does not regularly participate in these affairs, and he revealed some of the details to a reporter from *Harper's*. He spent, he said, at least 20 to 25 hours rehearsing his testimony with the lawyers, who admonished him, among other things, not to "weaken your answers with all the qualifications you think you ought to make." They said, "Oh, don't mention the exploding bullets. My God, that's so damaging to the case," he recalls. Baer, who was paid $35,000 for his efforts, added that he was "determined never to tell a lie."

That may be. But what happens to most psychiatrists who resist the "training" of the defense lawyers? "If a man doesn't testify the right way, he is not rehired," said one defense attorney in a study published in the *Rutgers Law Journal*. (Section 6 of the "Principles of Medical Ethics" of the American Psychiatric Association, by the way, reads: "A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment.")

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Did you hear voices?

The theory behind our "adversary" system is that when you pit one group of experts like these against another the truth will somehow emerge. When the hired-gun psychiatrists do their act, however, the result is not information, but confusion. "None of them had the same conclusion," complained Nathalia Brown, a shop mechanic at the local electric utility and a Hinckley juror. "All of them said he had this illness, that illness, so how are we to know what illness he has? I felt on the brink of insanity myself going through this, you know."

This, of course, is precisely what defense lawyers seek. As far back as 1945, Julian Carroll, the New York attorney who handled poet Ezra Pound's famous insanity defense against treason charges, wrote a friend that insanity trials are a "farce" in which the "learned medicos for each side squarely contradict each other and completely befuddle the jury." What was true then is even more true today, and all it took was confusion and nagging doubts in the minds of the jurors to gain Hinckley's acquittal.

In the nation's prisons, fooling the shrinks is getting to be a science. Inkblot tests offer fertile ground for displays of psychosis, and inmates who have successfully pleaded insanity have instructed their cohorts on what to see—sexual acts, genitalia, and the like. Ken Bianchi, the Hillside Strangler, studied books on psychology and hypnosis before convincing a number of psychiatrists he had a dual personality, and only an especially alert one found him out. An experiment at Stanford University suggested that conning these psychiatrists may not be all that hard. Eight subjects, all without any record of mental illness, feigned hearing voices and thereby gained admission to 12 different mental hospitals. They did not falsify any details of their lives other than that they heard voices. Eleven of the 12 were diagnosed as "schizophrenic" while the 12th was diagnosed "manic depressive."

"I probably know more about psychiatry... than your average resident psychiatrist," boasted Gary Trapnell, who had some justification for his claim. "I can bullshit the hell out of one in ten minutes."

It's not that psychiatry has nothing to tell us, nor that many of its practitioners are not dedicated to helping others. The problem is the way this specialty is used in insanity trials: the endeavor itself is in many ways absurd. These psychiatrists are interviewing criminals who know that if they come off seeming a little bananas, they might get off the hook. The notion that something resembling scientific data will always result from such subjective encounters is, well, a little bananas itself. On top of that, the courtroom psychiatrists are not purporting to inform us of a defendant's *present* mental state, though even that can be elusive enough. They are claiming to divine the defendant's mental state when he committed the crime, which probably was months before. "I can't even tell you what *I* was thinking about a week ago, or a year ago, let alone what someone else was thinking," says criminal psychologist Stanton Samenow, author of *Inside the Criminal Mind,* whose eight years working at St. Elizabeths hospital in Washington made him deeply skeptical of traditional attempts to understand and catalogue criminals according to Freudian concepts. Indeed, how would you begin to *prove* an assertion such as the one that John Hinckley tried to shoot Reagan because he saw the president as an "all evil prohibitive figure?" This is not evidence. It is vaporizing. Coleman testifies at criminal trials with delightful iconoclasm that psychiatrists such as himself have no more ability than anyone else to inform the jury as to what was going on in a criminal's mind at any given time.

Poor relations

But one should not conclude that the only thing wrong with the insanity defense is that it lets the felons free on the basis of recondite psychiatric excuses. The injustice goes much deeper. Some psychiatrists, for example, lend their courtroom aura and mantle of expertise to the prosecution. Jim Grigson, the so-called "Hanging Shrink" of Texas, will tell a jury after a 90-minute interview with a defendant that this individual "has complete disregard for another human being's life" and that "no treatment, no medicine, nothing is going to change this behavior." Psychiatric opinionizing can cut both ways.

There's the further problem that psychiatrists, the gatekeepers of this defense, have their greatest rapport with the problems of those closest to their own social status. A few years ago, Dr. Daniel Irving, a psychiatrist in Washington, demonstrated this attitude in an article Blaine Harden wrote for *The Washington Post*. "I hate to say this," Irving confided, "but I don't like to work with poor people... They are talking about stuff that doesn't interest me particularly. They are the kind of people who don't interest me." Over 95 percent of all psychiatric patients are white, and James Collins, a black psychiatrist

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who is chairman of the Howard University Medical School Department of Psychiatry, told Harden that "[the] biggest single problem is that many psychiatrists cannot relate to poor people."

In fact, the insanity defense itself can be weighted heavily towards those who are well-off. This is not just because a Hinckley family can muster upwards of a million dollars to mount a prodigious legal and psychiatric defense. On a subtler level, someone from a "nice" upper-middle-class background who commits a heinous crime is more readily seen as off his rocker than is someone from a poorer background in which crime is closer to the norm (or is at least perceived to be). During the Hinckley trial the jury witnessed his family sitting behind him, the "perfect couple," as one observer said later. "Hinckley's father was sitting there with a pondering look on his face; his mother was wearing red, white, and blue outfits; and his sister was a former cheerleader and homecoming queen. Real Americans." Surely there must be something wrong with a young man who could enjoy such advantages and still go out and shoot a president. It was the sort of tableau that a black felon from, say, East St. Louis, might have some trouble assembling.

Such considerations may help explain why Henry Steadman of the New York State Department of Mental Hygiene found that while whites account for only 31 percent of the prison population in his state, they were a full 65 percent of those found not guilty by reason of insanity. "Racial discrimination favoring whites in successful insanity defenses is strongly suggested by these figures," writes Abraham Halpern.

This in turn points to something even more fundamentally unjust about the insanity defense: the way it draws arbitrary and culture-bound distinctions between defendants with different kinds of life burdens and afflictions. A John Hinckley may well harbor anger against his parents and anguish at his unrequited love for actress Jody Foster. Such problems can be very real for those who go through them. But they are no *more* real, no *more* inclined to affect behavior, than are the problems of a teenager of lesser means, who may be ugly, or kept back in school two or three times, or whose parents may not love him and who may have been "passed around" among relatives and older siblings for as long as he can remember, or who may find doors closed

The Bard of St. Elizabeths

One of the most famous insanity cases in our history is one that never went to trial. It involved the poet Ezra Pound, who was indicted for treason after criticizing the American war effort over Rome Radio during World War II. Upon returning to the U.S., Pound was declared unfit to stand trial and was sentenced to St. Elizabeths mental hospital in Washington for the next 12 years.

Until recently, the case was of interest mainly to a small clique of Pound scholars. Now a new book entitled *The Roots of Treason*, by E. Fuller Torrey, has given the episode a much wider import. Torrey, himself a psychiatrist at St. Elizabeths, has unearthed a fascinating inside story of how Pound's insanity defense actually came about. In so doing, he suggests how the inclinations of psychiatrists themselves come into play in the insanity defense.

Central to the Pound case was one Winfred Overholser, then the head of St. Elizabeths and a lion of the psychiatric profession. Overholser, a cultured and scholarly man, took a personal interest in Pound and determined him unfit to stand trial, despite much obvious evidence to the contrary.

There was considerable anxiety among his junior staff when it came time for the case conference at the hospital, because many of these staff members disagreed with their boss's conclusion. Overholser, moreover, had shown an inclination to bend professional judgments to institutional and other goals. For example, he had dismissed the head of alcohol treatment at the hospital for having the temerity to suggest that the U.S. Congress—which funded St. Elizabeths—included members who might possibly have drinking problems.

"Out of loyalty to Win we had to respect Win's diagnosis," one of those present recalled. "And since we had come to such a different conclusion we finally decided not to make any formal diagnosis at all." Overholser, for his part, did not begrudge his pliant subordinates their dissenting view. "We don't need to disturb the practicalities of the situation by making it public," he said. "We should just keep it to ourselves."

And that is precisely what Overholser did when he testified at Pound's hearing. Torrey asked one of Overholser's subordinates, Dr. Carlos Dalmau, whether the chief psychiatrist had committed perjury. "Of course Dr. Overholser committed perjury," he replied. "Pound was a great artist, a national treasure. I would have committed perjury too—gladly."

Over the next 12 years, Pound lived in the building in which Overholser's own quarters were located. They had frequent literary discussions, and Overholser even referred to Pound as his "guest." There is no evidence that Pound received any treatment during his stay.

—*J.R.*

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to him because he is not blond and blue-eyed the way Hinckley is. If a Hinckley merits our compassion, then surely those with hard life circumstances do also. Under the insanity defense, we absolve Hinckley totally of responsibility, while we label his hypothetical counterpart a bad person and send him to jail.

So arbitrary is the line that the insanity defense invites us to draw that all sorts of prejudices and vagaries can enter, of which racial and class bias are just two. "The actual psychological state of the defendant may be a rather minor factor" in the decision even to use the insanity defense, writes C.R. Jeffrey in his book, *Criminal Responsibility and Mental Disease*. Rather, this decision is based on such factors as "the economic position of the defendant, the nature of the criminal charges, the medical facilities in the community," and the like.

Big difference

This is not to say that you won't find any poor people or non-Caucasians in the maximum-security hospitals in which insanity acquittees are kept. You will, but it's important to understand how they got there. It probably wasn't through the kind of circus trial that John Hinckley could afford. Very likely, it was a plea bargain, in which a prosecutor decided it was better to put a dangerous person away, even if just for a short time, than to devote scarce resources to a trial that he or she might lose. One study, published in the *Rutgers Law Review*, found at least two jurisdictions in which the prosecutors actually raised the insanity defense more frequently than the defense attorney did. "Clearly the prosecutor saw the [insanity] defense as a means to lock defendants up without having their guilt proved beyond a reasonable doubt," the study concludes.

Given such realities, it should not be surprising that there is often not much difference between those who end up in maximum security mental hospitals and those who end up in their penal counterparts. "Lots of people could have ended up in either one or the other," says E. Fuller Torrey, a psychiatrist at St. Elizabeths mental hospital in Washington. Samenow goes further. On the basis of his own experience studying insanity acquittees at St. Elizabeths, he declares flatly that "neither [his colleague Dr. Samuel] Yochelson nor I found that any of the men we evaluated were insane unless one took tremendous liberties with that word."

That may be a bit of an exaggeration. But the similarities between criminals we call "insane," and those we call simply "criminals," cannot be dismissed. Take recidivism. There is evidence that criminals released from mental hospitals tend to repeat their crimes with about the same frequency as their counterparts released from prison. This point is crucial because the purpose of a criminal justice system is not just to punish offenders; it is to protect the rest of us from dangerous people as well. Through the insanity defense, we go to lengths that are often ridiculous to make a distinction that in many cases is without a difference.

"I don't like to work with poor people," the Washington psychiatrist said. "They are talking about stuff that doesn't interest me particularly."

Sometimes the experts are the last to see what needs to be done. Listen to Lawrence Coffey, one of the Hinckley jurors who was unhappy with the verdict for which he himself voted. "I think it [the law] should be changed," he told a Senate hearing, "in some way where the defendant gets mental help enough that where he's not harmful to himself and society, and then be punished for what he has done wrong." Maryland Copelin, also one of the jurors, agreed. "I think they [defendants] should get the help they need and also punishment for the act they did." In other words, Hinckley needed treatment, but he deserved punishment, too. Who could argue with that? Well, the law, for one. It said that Hinckley was either guilty or not guilty by reason of insanity. "We could not do any better than what we did," Copelin said, "on account of your forms," which gave the jury only these two options.

In short, the insanity defense cuts the deck the wrong way. It makes no provision for the vast middle ground in which offenders have problems

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but should bear responsibility too. Instead of persisting in making this artificial distinction between "normal" criminals (whatever that means) and "insane" ones, we should ask first a very simple question: did the individual commit the crime? That established in a trial, we should then, in a sentencing phase, take all relevant factors into account in deciding what combination of punishment and treatment is appropriate. "Either you did it or you didn't do it," says Samenow, who supports the abolition of the insanity defense. "I think we should try the criminal first, and then worry about treatment." In other words, don't expect the jury to make Talmudic distinctions on which even the experts cannot agree. Get the psychiatrists out of the courtroom, where they cause confusion, and put them into the sentencing and treatment process, where they may be able to help.

In this sentencing phase, which would take on a new importance, Hinckley's infatuation with Jody Foster, and Dan White's overindulgence in junk food, would be given due regard. So too would the incapacity of one who was totally deranged. The crucial difference from current practice is that the examination would be done by court-appointed psychiatrists (or other professionals) instead of by hired guns proffered by either side. Since psychiatrists are as human as the rest of us, this system would not be perfect. It would, however, be better than what we have today.

In almost all cases, some punishment would be in order. You don't have to believe that retribution is the whole purpose of the law to acknowledge that something very basic in us requires that when someone causes serious harm to someone else, he should pay. This approach would eliminate perhaps the most dangerous absurdity of the present insanity defense. When a criminal wins acquittal on this ground, the criminal justice system has no more claim on him. The only way he can be kept in confinement is if he is declared insane and committed to a mental institution through a totally separate procedure. (Some states require an automatic confinement for one or two months, ostensibly to "observe" the acquittee.) No problem, you say. They've just been declared insane. The problem is, *that* insanity was at the time of the crime, which may have been a year or more before. By the time of the commitment hearing, the old problem may have miraculously cleared up. The commitment authorities are then faced with two bad options. Either they tell the truth and let a dangerous person out or they fill a bed in a

NEOLIBERAL CONFERENCE TRANSCRIPTS

For three days last October, more than 350 people—among them politicians, journalists, academics, schoolteachers, lawyers, labor leaders, doctors, senators, corporate executives, a judge, and a presidential candidate—got together to argue about the state of the world and to set an agenda for the emerging neoliberal movement.

The conversation ranged over such topics as economic growth, entitlement programs, national security, education, patriotism, entrepreneurship, religion, credentialism, patronage and democratic accountability, and the politics of selfishness. Participants included Governor Bruce Babbitt, Mancur Olson, Michael Kinsley, Kathleen Kennedy Townsend, James Fallows, Senator Ernest Hollings, Hendrik Hertzberg, Nicholas Lemann, Morton Kondracke, Senator Thomas Eagleton, Robert M. Kaus, Taylor Branch, Justice Richard Neely, and the *Monthly*'s editor-in-chief, Charles Peters. (Not to mention Irving Kristol and Victor Navasky, who led a lively session of criticism.)

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crowded mental hospital with someone who will be there not for treatment, but only to be kept off the streets. Eliminating the insanity defense would eliminate such charades.

Once punishment is completed, the question of danger to society would come to the fore. First offenders committing non-violent crimes generally pose little such threat, and in most cases could be safely paroled. At the other extreme, violent repeat offenders would be locked up for a very long time. While reform is always possible, the sad fact is that most repeat offenders will keep on repeating until they reach a "burn-out" period sometime after they reach age 40. Since the recidivism rates cut across the categories we call "normal" and "insane" criminality, the insanity defense simply doesn't help us deal with reality in this regard.

Hot-blooded crimes, such as the Dan White shooting, should be seen for what they are. Such people generally don't pose a great threat because the circumstances of their crime are not likely to happen again. It costs between $10,000 and $20,000 a year to keep a prisoner in jail, and that money would be better spent on those for whom it's really needed. In other words, White's eight-year sentence was not necessarily wrong. The wrong was in the psychiatric speculation through which that result was justified. We can achieve justice in such cases through simpler and more honest means.

What a time

But isn't the insanity defense necessary to protect the infirm? "People who are mentally ill deserve treatment," says Flora Rheta Schreiber, whose book *The Shoemaker* details the sad story of a troubled murderer. "They don't deserve to be locked up in prison."

Fair enough. The trouble is, virtually all criminals have mental problems. The difference between a bank robber and yourself is not in your shirt size or the shape of your hands. Is there any such thing as a "sane" rape or a "sane" axe murder? If anyone did such deeds with calm and rational deliberation, would that individual not be the most insane—and dangerous—of all? Samenow, moreover, says that for the vast majority of criminals, the kind of treatment that might be effective is pretty much the same. The secret scandal of the insanity defense is the way it justifies our atrocious penal system by purporting to show kindness for one group that is selected arbitrarily in the first place. We deny treatment to the many under the pretext of providing it for a few.

And a pretext it often is. Talk to someone who has visited a maximum-security hospital for the criminally insane. To be sure, there are good ones here and there. But in his book, *Beating the Rap*, Henry Steadman describes a reality that is probably more common than not. Such hospitals in his state are "prisonlike," he writes, with "locked wards, security officers, and barbed wire fences.... There is a substantial level of patient-patient assault; homosexuality, both consenting and nonconsenting, is common, and guards are sometimes unnecessarily brutal... *It is simply doing time in a different setting*." (Emphasis added.) Barbara Weiner, who heads a special outpatient program for insanity acquittees in Chicago—one of the few programs of its kind in the country—told a Senate hearing that "few states have specialized programs for treating mentally ill offenders." (Those of means, of course, can often arrange a transfer to private facilities at which conditions are more genteel.)

So averse are American psychiatrists to helping people in life's lower stations that over half the staffs of this country's public mental hospitals are graduates of foreign medical schools, where standards may not be awfully high. In 11 states, including Illinois and Ohio, the figure is over 70 percent. Just try to imagine a psychiatrist from, say, India, trying to understand a felon from the South Bronx. Torrey cites a psychiatrist who left the Illinois state hospital system telling of a colleague in charge of prescribing drugs who did not know that .8 and .80 were the same number.

Much of the problem is that most of us prefer to keep a comfortable arm's length from such realities. The people who run our criminal justice system are no exception. After observing a year's worth of mental incompetency hearings in New York, Steadman observed that "of about 35 judges, 12 attorneys, six district attorneys, and 12 psychiatrists, not one had ever seen or been inside either of the two facilities to which incompetent defendants are committed." A former public defender in Washington, D.C., who had pleaded before the Supreme Court the case of an insanity-acquittee who was trying to get out of St. Elizabeths, told me he had never met the individual for whose release he was pleading.

Getting rid of the insanity defense would help to break the spell and make us confront the deficiencies in our correctional systems. No longer could we congratulate ourselves that we are being humane and just when we are being neither. If eliminating the defense would help get a few dangerous felons off the street, so much the better. But a great deal more is at stake. ■

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WHO'S WHO in the Administration

Sex dominates our news this month. Two of the most powerful members of the White House staff are reliably reported to have been engaging in extramarital affairs with female White House employees. One of the employees has left to join a local public relations firm, but the other remains and her relationship is sufficiently flagrant to have come to **Nancy Reagan**'s attention. The wife of the Moral Majority's favorite president is said not to be pleased. Meanwhile over at *The Washington Post*, the rumor is that Ben Bradlee is sitting on a story about the sexual adventures of a Democratic presidential candidate. One reason for the story's not appearing may be that a prominent *Post* person was involved in some of the episodes...

Last October we reported that it was unlikely that we'd be hearing much from the administration about trucking deregulation until after the election because Ronald Reagan doesn't want to ruffle the feathers of his favorite union boss, the Teamsters's **Jackie Presser**. Another reason the president may not want to talk about trucking deregulation is that it inevitably would put the spotlight on the Interstate Commerce Commission, which these days is more of an embarrassment than usual. Chairman **Reese Taylor**, a Reagan appointee and former law partner of **Paul Laxalt**, can't seem to get along with the other three commissioners. Taylor's been feuding with them about access to the commission staff, which he controls. Cooperation is so poor that the commission hasn't met since October 1982; instead, the commissioners often confer with each other and the chairman by phone...

Ed Meese has managed to inadvertently help one member of the administration: **Thorne Auchter**, the recently departed head of OSHA. Before he left, Auchter rejected a proposed emergency safety standard that Dupont was lobbying against. It just so happens that Auchter owned $21,000 worth of Dupont stock. But after the matter was reported in *The Washington Post*, the story died. The press was too busy looking into Ed Meese's mortgage to chase down a second conflict-of-interest story....

In

EDUCATION

Assistant Secretary for Postsecondary Education—**Edward M. Elmendorf** has been deputy assistant secretary for student financial assistance.

HEALTH AND HUMAN SERVICES

Assistant Secretary for Legislation—**John F. Scruggs** has been a special assistant to the president for legislative affairs.

LABOR

Assistant Secretary for Employment and Training—**Frank C. Casillas** has been a management consultant in Chicago.

STATE

Undersecretary for Political Affairs—**Michael H. Armacost** has been ambassador to the Philippines.

Ambassador at Large—**Richard Fairbanks** has been a special negotiator and chief deputy to the special envoy to the Middle East.

Ambassador to Nicaragua—**Harry E. Bergold Jr.** has been ambassador to Hungary.

Ambassador to the Philippines—**Stephen W. Bosworth** has been chairman of the State Department's policy planning council.

AGENCIES AND COMMISSIONS

Chief Counsel, National Labor Relations Board—**Charles M. Williamson** has been assistant administrator of the Labor Department's pension and welfare benefits programs office.

General Counsel, National Labor Relations Board—**Rosemary M. Collyer** has been head of the Mine Safety and Health Review Commission.

General Counsel, Federal Energy Regulatory Commission—**William H. Satterfield** has been deputy solicitor at the Department of Interior.

Out

WHITE HOUSE

Special Assistant to the President for Federalism and Health and Human Resources—**Robert B. Carleson** has resigned to become government relations director in the Washington office of the New York-based accounting and management firm of Main Hurdman/KMG.

HEALTH AND HUMAN SERVICES

Assistant Secretary for Planning and Evaluation—**Robert J. Rubin** has resigned to join ICF Inc., a Washington-based health policy research and consulting firm.

STATE

Undersecretary for Political Affairs—**Lawrence S. Eagleburger** has resigned to go into private business.

Ambassador to Nicaragua—**Anthony C.E. Quainton** has resigned.

AGENCIES AND COMMISSIONS

Chief Counsel, National Labor Relations Board—**Jack B. Albanese** has resigned to join the Washington office of the Atlanta-based law firm of Hansell and Post.

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Plato Meets Behir THE Twelve-Legged Dragon

Deep inside a government office building in downtown Washington, seven high-ranking officials stare intently as a well-built woman in a tight-fitting brown jumpsuit slips behind a dressing screen. When she reemerges in skimpy attire, the men's jaws drop, and their faces redden.

If this were, say, the Capitol or the State Department, one might think a sex scandal was in the making. But this is the U.S. Customs Service headquarters, and, as Nathaniel Hawthorne observed more than 100 years ago in the introduction to *The Scarlet Letter*, "Neither the front nor the back entrance of the Custom House opens on the road to Paradise." Joseph Kaplan, an unusually resourceful Customs lawyer with the firm of Baskin & Steingut, has arranged the five-minute fashion show to convince Customs to give his client, an apparel importer, the benefit of the lower duty rate applied to clothing classified as "underwear," as opposed to "outerwear."

The tendency to turn the vividness of human experience into an exercise in categorization is common in any bureaucracy, but at the U.S. Customs Service such exercises assume ludicrous proportions. This is a world where every day brings a Solomon-like decision on whether G.I. Joe "action figures" are dolls or toys; whether shirts with square backs should be considered dress shirts or sports shirts; and whether antiquated language used in defining sneakers can be used to classify other shoes made in a similar way.

Because the rules that govern imports—the Tariff Schedules of the United States of America (TSUSA)—were voted into law back in 1962, the task of accommodating them to latter-day reality can get tricky. But the bureaucrats at the Customs Service do not despair of bringing the innovations and changes in fashion of the last 22 years into line with categories that were dreamed up when John F. Kennedy was president. Instead, they have turned the whole thing into a challenging philosophical exercise. Indeed, if one were to search for a historical antecedent to the culture of the Customs bureaucracy, it would have to be Athens in the fourth century, B.C.—the age when Plato and Aristotle grappled with the question of whether Reality embodies, or merely partakes of, the Ideal.

Cogito Ergo Shoe

The contemplative nature of the Customs culture isn't immediately apparent to outsiders. For example, at first glance around the office of Jim Sheridan at Six World Trade Center in New York, you might think you'd wandered into a dis-

Rosalind Resnick is imports and government affairs editor for Footwear News, *a Fairchild publication.*

Illustration by David Berkner

BY ROSALIND RESNICK

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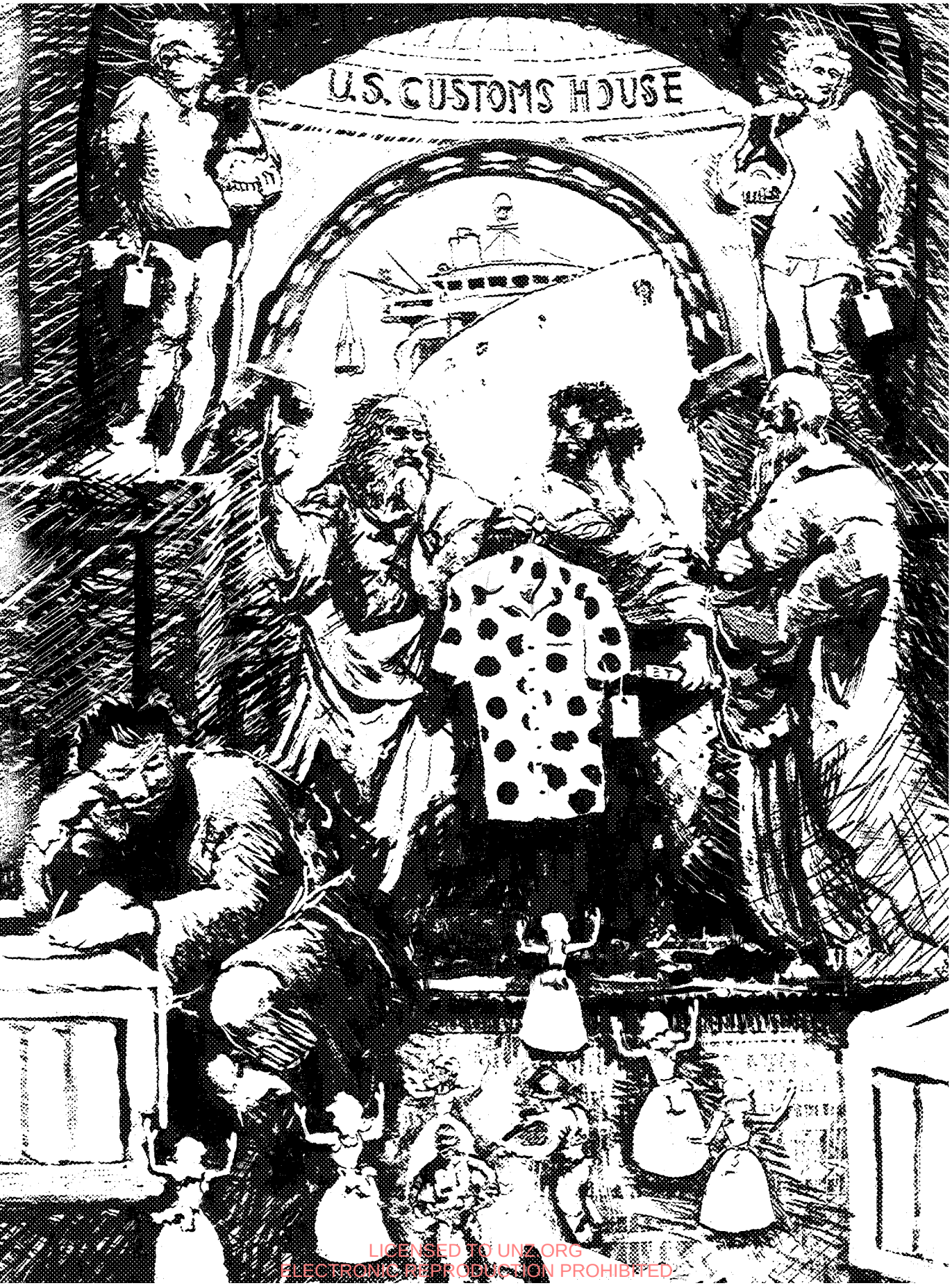

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count shoe store. Sheridan is one of Customs' national import specialists for athletic footwear, and his office has dozens of sample sneakers arrayed on racks on the walls. But talk to Sheridan and a different image emerges. Sheridan spent three years as an undergraduate studying medieval philosophy at St. Joseph's Seminary in New York, and is a student of Plato, Aristotle, and St. Thomas Aquinas. He has a passion for subtle distinctions. Happily, such distinctions come up quite frequently in his day-to-day decision-making.

Consider the question of what constitutes a "foxing" or "foxing-like band" on a shoe. When Congress drafted the tariff schedules in 1962, lawmakers tried to protect the domestic footwear industry from an onslaught of cheap sneakers from the Orient by providing that any canvas or vinyl shoe with a tape band attached at the sole and overlapping the "upper" be assessed at a higher rate of duty. But sneaker styles and technology have changed quite a bit over the last quarter-century, and recently Customs was faced with the hair-splitting task of deciding whether vinyl casual shoes with a two-piece upper that overlapped the inner lining possessed a "foxing-like band." Did Congress intend for the lower part of the upper to constitute such a band, or was it part of the upper and, therefore, inherently incapable of overlapping itself?

Congress, of course, never even considered the issue: two-piece-upper vinyl shoes did not exist in 1962. Sheridan, in trying to stretch the tariff language to fit the current styles, drew on his theoretical training. "Plato would think of some essence out there," he recalls thinking. But Sheridan preferred a more systematic approach, relying for his definition on what he terms "an accumulation of differences." In other words, using the analogy of a desk, does a particular piece of furniture fall more logically into the desk category than any other? On a "sliding scale" with "desk" and "not a desk" at opposite ends, does the object in question have more characteristics of a desk than of a non-desk? And should a piece of furniture that barely "squeaks by" in six "desk" categories be considered more of a desk than another piece of furniture that steadfastly holds its own in five categories but barely misses out in the sixth? Employing this logic, Sheridan concluded that the vinyl shoes did not have a "foxing-like band."

But not everyone accepts the logic of the footwear expert whom detractors have referred to derisively as "the philosopher-king." One who didn't was Sheridan's boss. This inspired lawyers for the importers to devise rococo theories about what constituted a foxing-like band. One suggested that if a shoe could not be held together without the lower band, then that piece could not be termed a foxing band. In the end, the Customs Service decided to accept this position in large part, but, by that time, it was too late in the season for importers to begin marketing the controversial footwear.

Another matter for contemplation at the Customs Service is the question of what constitutes a doll. To any parent who has gone Christmas shopping for his five-year-old, the answer is obvious. Not so for Customs officials. Both bureaucrats and lawyers agreed that Barbie and Raggedy Ann are dolls, but what about a G.I. Joe "action figure" or a Dungeons & Dragons figure of Elkhorn the Dwarf Fighter? Passions begin to stir when the duty rate for "dolls" is 14.1 percent and the tariff for "toy figures of animate objects" is zero if the toys are produced in a country whose exports of that commodity are eligible for duty-free treatment under the Generalized System of Preferences (GSP).

The battle began in earnest when *Star Wars* hit the movie theaters and, shortly thereafter, a flood of plastic figures from the Orient bombarded America's toy stores. Customs naturally sought to classify the plastic humanoids as dolls at the higher duty rate. The importers, naturally, claimed the characters were actually the contemporary equivalent of lead soldiers and, therefore, should be classifiable as toy figures of animate objects—hence, duty-free.

"Within the trade, nobody calls these dolls; they call them action figures," argues Michael O'Rourke of Rode & Qualey, counsel to LJN, the toy company that brings in Dungeons & Dragons figures. But when the matter was brought before Harvey Fox, Customs director of classification and value, in a case involving plastic G.I. Joes shipped in from Hong Kong, Fox concluded that such figures are dolls. Not incidentally, Fox struck a blow for sexual equality at the same time. After consulting four encyclopedias, a dictionary, and H.G. Wells's autobiography (which created some definitional difficulties with its reference to a "toy soldier with rotating arms"), Fox rejected the notion of an "action figure" as distinct from a "doll," calling the trade term "merely a euphemism catering to lingering taboos in our society against deviations from traditional role-playing in children's games." What taboos? "The underlying premise," Fox wrote, "is that toy soldiers are not dolls because boys play with them

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Robert Coles on INTELLECTUALS

For many years, as I have worked, trying to understand how all sorts of families make do, often against considerable odds, I have written articles and books for interested fellow citizens. Soon enough, I have received the expected responses. But on one score I confess to perplexity, even alarm — an absence, almost total, of reaction when it comes to an entire side of my work. I refer to the descriptions I've rendered of the religious thoughts and feelings of the children and adults I've come to know.

All I need do, it seems, is come up with a social conclusion, make a psychological generalization, attempt a literary analysis, try portraying a certain kind of personal or regional life, and there are thoughtful (appreciatively or reprovingly so) correspondents willing to share their evaluations publicly. But when I have tried to describe how, say, an old Spanish-speaking woman from northern New Mexico, or a Southern black child, or an Appalachian white child, or a small-town working-class man happen to feel about Jesus and His words and deeds, then the result is either the silence already mentioned, or rarely, a puzzled, frustrated truculence: "I don't see why you get yourself into all that religious talk! If you're trying to prove that people are superstitious, or need a crutch, then a page is enough, not a chapter or half a book!"

In my own case, the attention given religious faith is held even more suspect because I'm a psychiatrist — and so, presumably, "educated" and "perceptive" enough (so I was told in another friendly letter!) to "know better"! I should be what an intellectual ought to be — someone who analyzes how others think and feel, who gives reasons for one or another moment of history. The civil rights struggle, for instance: I ought have kept my mind on the various "variables" that prompted it.

Meanwhile, there is this young man from Birmingham, Alabama, speaking in 1965: "I don't know why I said no to segregation. I'm just another white Southerner, and I wasn't brought up to love integration! But I was brought up to love Jesus Christ, and when I saw the police of this city use dogs on people, I asked myself what Jesus would have done — and that's all I know about how I came to be here, on the firing line!"

Intellectuals also need to document how people's beliefs prompt them to live their lives. And I fear that when I started doing that I learned something about myself and my kind — how arrogant and self-centered we risk becoming: interested in our own heady assertions, and anxious to be the spokespersons for all those others, who don't write and teach and come up with new ideas, but who rather, try to go from one day to the next, and who yes, in large numbers indeed, keep calling on Jesus, not the intellectuals, for guidance. —from the June 1982 **NEW OXFORD REVIEW.**

If you are interested in exploring the beliefs behind the "data" — in probing the deeper religious feelings embedded in our lives, however much we try to ignore them — if you want to *understand* what moves a Martin Luther King Jr., a Lech Walesa, an Archbishop Romero, a Mother Teresa, a Dietrich Bonhoeffer, a Polish Pope, a Simone Weil, a Dorothy Day, a George Orwell, then you're ready to look into the **NEW OXFORD REVIEW.** We are spearheading the renewed interest among today's intellectuals in what Daniel Bell terms "the sacred." Robert Coles writes a regular column called "Harvard Diary," and like him, our writers — Juli Loesch, John C. Cort, J.M. Cameron, Arthur F. McGovern, Dale Vree, and others — express themselves with clarity, verve, style, and "heart." Published monthly, we have been praised by *Newsweek* for being "thoughtful," and the *Library Journal* predicts we will "doubtless command increasing attention."

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rather than girls. However, there is little, if anything, in the various dictionaries, encyclopedias, and other secondary authorities... supporting an interpretation of the TSUSA which would attribute to the Congress an intention that parents of little girls pay more for their toys than parents of little boys for similar toys merely because the toy for one depicts a baby, dancer, or fashion model while the other depicts a soldier or cowboy." From now on, G.I. Joe and Barbie are on the same footing.

You win some and you lose some. O'Rourke, whose client imports some non-humanoid figures as well, may console himself with the classification of Behir, a bicolored plastic dragon with 12 legs and a triangular horn flaring out from behind its head, as a "toy figure of an inanimate object." Behir is exempt from Fox's ruling because he is an imaginary animal. And Evil Nightmare, a black, charging horse with white, skeletal hands for a harness, has been dubbed a "toy figure of an animate object." Evil Nightmare is exempt because dolls have to be people. Both can come in duty-free under GSP from certain Far East countries.

Like all truly serious philosophical discourse, the debate over injection-molded figures like Behir and Evil Nightmare is comfortably removed from reality. This is because, as O'Rourke likes to point out, "there is no domestic industry being protected. Nobody wants to make these little suckers here anymore."

Where were you in '62?

How did we end up with a system better designed for breeding philosophers than with establishing sensible tariff policy? We can trace our most recent problems to the tariff schedules. When they were introduced back in 1962, they were intended to streamline the old hodgepodge of antiquated laws and court decisions into a unified system of classification. Where imported goods were previously classified and assessed a duty based on relatively vague definitions, the TSUSA inaugurated a seven-digit system of nomenclature that could define the merchandise to an exactitude of six subheadings.

Unfortunately, the battle for clarity has largely ended in defeat at the hands of lawyers, who've found in the tariff schedules a chance to create a legal history for each new word and provision. The attorneys, accustomed to making their living on the occasional windfall gained by trying cases on contingency, began to reorient their practices toward "preventive law." This has meant replacing chancy litigation with steady hourly fees for checking clients' merchandise for potential customs problems.

The difficulties were made worse by the fact that Congress would never be able to keep up with changes in styles. This is what led to the "foxing-like band" controversy. A similar controversy bubbled up over imports of dress shirts and sports shirts from South Korea. Several years ago, when quotas were instituted to curb imports of Korean men's shirts, the Far Eastern imports were tallied in two categories—"dress" and "other." The "other" category was expected to be filled primarily by sports shirts.

As Ken Baden of the American Association of Exporters & Importers recalls, Customs decided that any men's shirt with a square back was a sports shirt and that only an old-fashioned shirt with tails could be classified in the dress category. So the quota for the "other" category quickly filled up, and a number of shipments of sports shirts were embargoed until the quota reopened. So strict was Customs in embargoing the sports shirts that even square-back shirts destined for prisoners on New York City's Rikers Island were detained.

In the midst of the controversy, Baden says he conferred with a senior official of the Commerce Department. After a long discussion about the problems the embargo was creating for importers, Baden recalls that the Commerce official finally admitted, "Ken, I know you're right and we're wrong. But we're consistently wrong."

The battles over Barbie dolls, foxing bands, and square-backed shirts are not, of course, the kind of Customs controversies you read about in your American history texts. Instead, you probably learned about the role of tariffs in the broad panorama of our nation's past: the antagonisms between the thirteen colonies and Great Britain and between the northern and southern states; their part in deepening the Great Depression and in defining, in large measure, the differences between the Republican and Democratic parties through much of the 19th century. More recently you've no doubt read about the tariff issue in the context of our trade tensions with countries such as Japan. All this is very important. But within the Customs bureaucracy, where it all comes home to roost, the clerks have had to weigh and measure, ponder and deduce, with ever-increasing subtlety, in response to far more mundane matters. We can take comfort in the fact that while we may not be producing intelligent trade policy, at least we are producing very philosophical Customs officials. ■

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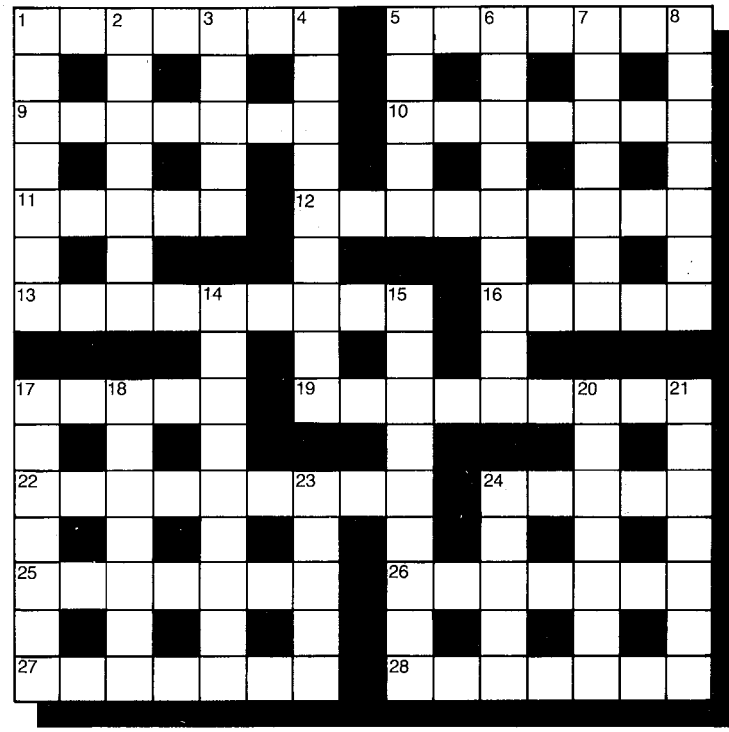
POLITICAL PUZZLE

by John Barclay

The numbers indicate the number of letters and words, e.g., (2,3) means a three-letter word. Groups of letters, e.g., USA, are treated as one word



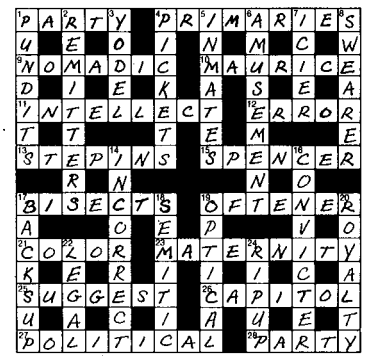
ACROSS

1. Candidate displays cards in service. (7)
5. Candidate gets Mandel excited about nothing. (7)
9. Law breaker hails messy mould. (7)
10. Mishandle or exhaust after attention-getter. (5, 2)
11. Trays set for woodland god. (5)
12. Union celebrity guides sailors? (5, 4)
13. Did Watt sense somehow Arizona and New Mexico in 1912? (3, 6)
16. River with an effort means big business. (5)
17. Nothing in Puerto Rico National Guard makes points. (5)
19. Holds back and pours after a pause. (9)
22. Old magazine rack used by insurance companies? (4, 5)
24. Display clothes on stylish New York transportation. (5)
25. Queen in her most formal dress shows off countryside. (7)
26. Read aloud the Diet Act. (7)
27. Plains tribe... (7)
28. ...and their followers. (7)

DOWN

1. Follower of Lincoln and Kennedy. (7)
2. Indian reorganized watch company. (7)
3. Out of the sun, to rise around fifty. (5)
4. Convention participant motion ran frantically. (9)
5. Norman without "a" is a figure at track. (5)
6. Disturbed Haig tuner is rather less nice. (9)
7. "Helped one wager."—Kennedy. (7)
8. Outlandish sales? (7)
14. Inebriated black, for example, in close contest. (5, 4)
15. Surprising prudeness for college dean at times. (9)
17. Shrewdly managed in Tripoli ticker-tape parade. (7)
18. Reroof carelessly around February 1 for would-be buyer. (7)
20. Midwest university elected princess. (7)
21. Senior in vessel makes electronic connection. (7)
23. Dividend is good for the French before America. (5)
24. Ham company distributed new flavor. (5)

Answers to last month's puzzle:



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Tamar Jacoby
ON POLITICAL BOOKS

The first hint was the National Conservative Political Action Committee's campaign against him in 1982. Clearly something strange was happening to Senator Daniel Patrick Moynihan. Not long ago, after all, in the mid-1970s, he was known as one of the most flamboyant and clever spokesmen for the neoconservative movement—a frequent contributor to *Commentary* and a close friend of its editor, Norman Podhoretz, a man who used his job at the United Nations to denounce the "infamy" of totalitarianism as loudly and frequently as possible. Yet by 1982 NCPAC radio and television spots were attacking him as "the most liberal United States senator in 1980"—anti-American, pro-communist, more liberal than even Teddy Kennedy.

What has happened to Moynihan in the Senate? Had Podhoretz been wrong? Or had NCPAC exaggerated? Why indeed has he voted since 1982 against the MX and for a nuclear freeze? Why has he spoken out against the invasion of Grenada and raised questions about U.S. policy in Central America?

Moynihan's new book* does not conclusively answer these questions. Like much of his writing, the three essays in this slim volume are elegant and elliptical, an often uneasy combination of anti-totalitarian rhetoric and more considered ideas. Moynihan defers to no one in his hatred of the Soviet Union, yet he believes we should be making diplomatic overtures to Cuba. He is, by turns, idealistic and self-promoting, an earnest patriot and a flippant joker.

What is behind these inconsistencies? Political calculations play a part, although it is hard to say how big. The liberals and Jews in his constituency pull in two different directions, and both seem to take their tithe. Yet, paradoxically, as one reads through *Loyalties*, sorting the grandstanding from the reasoned ideas, it also seems clear that Moynihan owes the better part of his wisdom, on foreign policy at least, to his years in the Senate—to the tempering effect that practical experience has had on his neoconservative views.

But Moynihan's evolution is more than just a personal story. It is also a tacit criticism of the neoconservative thinking that he gradually seems to be shedding. To what extent does America have a responsibility to stand for something in the world? How can we do so without using force—or using it only in dire circumstances, as a last resort? How can we be both anti-totalitarian and anti-nuclear? These questions lie, unspoken, just beneath the surface of Moynihan's book. He does not mention the neoconservatives, but these are all questions left in the wake of their arguments, questions that must be answered by anyone who wants to respond to their attack. Some of Moynihan's answers are less probing than others—less willing to doubt the doctrines of the *Commentary* crowd. What makes his book interesting is the way he is beginning, quite in spite of himself, to struggle with the neoconservative notion that ideology—the contest between communism and democratic values—is the most important aspect of our dealings abroad.

The thread that runs through the three essays is loyalty to country and, more importantly, to what he loosely calls "principles." The principle changes with each piece. In the first essay, on nuclear weapons, the principle is the importance in a democracy of careful and responsible debate.

Moynihan writes about the technical aspects of the nuclear issue with authority and remarkable clarity. Above all, he seeks to alert readers to the danger of abandoning deterrence. Thus he opposes the MX missile and the doctrine behind it, the shift toward a "first-strike" strategy. He argues firmly against the notion that the Soviet nuclear force is superior to ours. The problem is that both sides have come to depend primarily on big, vulnerable land-based missiles aimed at the other's missiles. That is what is pushing both sides to rely on the threatening new strategy often called "launch on warning" or "launch under attack."

Moynihan imagines how it would go: the blip on the radar screen, the unanswerable question—is it a Russian missile or merely a flock of geese?—and the eight to 12 minutes in which we would have to decide whether or not to launch our missiles first. And, of course, as he notes, all of this argues in a crisis for taking no chance and striking first—"use 'em or lose 'em," as the strategists say.

Tamar Jacoby is deputy editor of The New York Times *Op-Ed page.*

*Loyalties, *Harcourt Brace Jovanovich, $9.95.*

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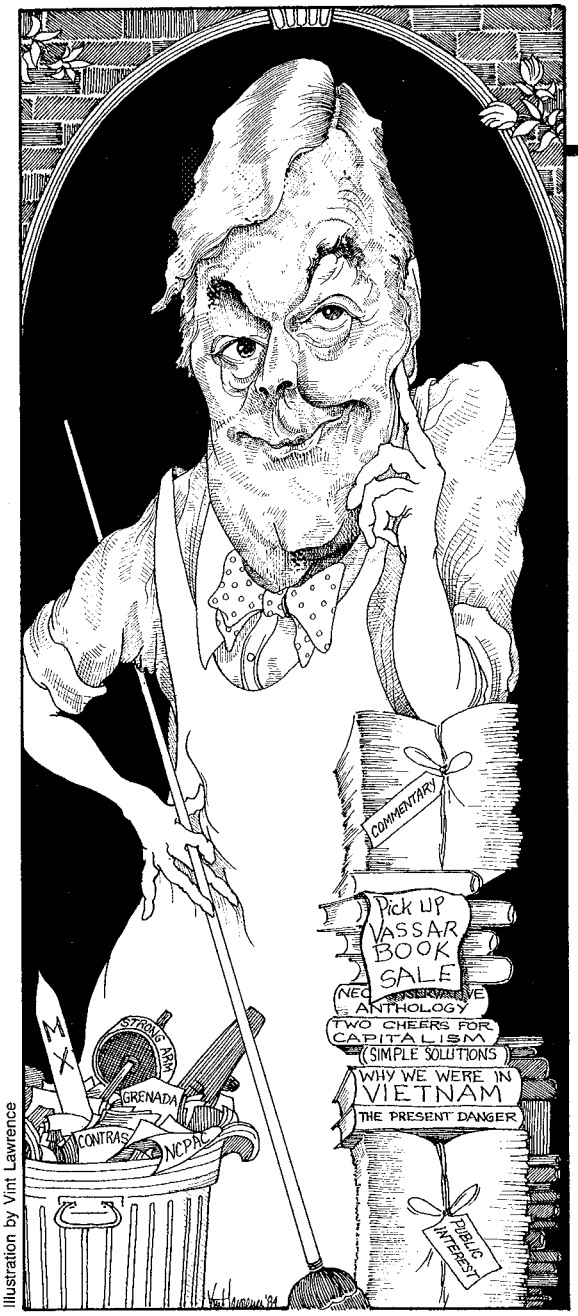

Illustration by Vint Lawrence

But more frightening than this crisis scenario is his sense of what the new doctrine would do to accelerate the arms race. "We would be taking leave of our senses," he notes caustically, opening a Pandora's box of unthinkable new weapons, including ever larger and more vulnerable missiles and a probably unworkable nuclear defense—a "space armada" of laser-emitting satellites.

For him, this is enough to temper even his anti-Sovietism. He is, as ever, extremely wary of the men in the Kremlin and, in true neoconservative fashion, convinced that our relations with them must remain a kind of vigilant contest. But he turns that neoconservative notion on its head by suggesting that the "test of nerves" should take place at the negotiating table. This may not sound like much—and it would not be on an ordinary Democrat's platform—but it is a sharp departure from the conventional hard-line wisdom of people like Norman Podhoretz, who now suggests that faith in arms control may be "a pacifist illusion" that weakens Western will and increases the chances of a nuclear war. For Moynihan, by contrast, ideology no longer comes first, in this case at least. Nothing seems more pressing to him now than the danger of these weapons, and he is firmly committed to negotiating not merely ceilings but real cuts in both sides' nuclear arsenals.

He is also thoroughly alarmed by the quality of debate about nuclear issues, and he dwells at length on the difficulty of deciding such questions in a democracy. He sees a "catatonic quality" in the decision to deploy the MX, a triumph of politics as usual and entrenched bureaucratic interests. But he saves his most scathing phrases for those—including, in effect, his old allies—who do not see that nuclear questions are too important to be "discussed at the level of rhetoric."

How, then, should we make decisions about our nuclear policy? Moynihan looks to the electorate. Why should the American people be any smarter or less reckless than congressmen, generals, and arms control experts? He does not quite say but he implies it is because they are not blinded by a need to win votes or by what he calls bureaucratic "routine, " and they see the threat more starkly. This may be Moynihan the politician talking, but he makes a strong, even eloquent, case.

The nuclear essay is the most convincing in the book, for it is here that Moynihan is best served by those two staples of neoconservative writing, his sense of urgency and his concern for democratic values. Here at last, the alarm is justified while the faith in democracy is brought back down to earth, down from the dangerous heights of polemicism, where it so easily becomes an excuse to threaten the Russians or impose our control on the countries of the Third World.

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The principles at stake in the second essay are, precisely, democratic values, and here, unfortunately, ideology tends to get the better of reality. The essay is set, in effect, at the United Nations, and a good chunk of it is a review of Moynihan's own most controversial moment there—his denunciation of the vote equating Zionism and racism. But that is only a polemical prelude to his real theme—an attack on how the Carter administration handled itself at the U.N. and, more broadly, on what others have called "the Vietnam syndrome."

Moynihan's charge is fairly straightforward. It has to do with misguided feelings of "guilt." Americans like Jimmy Carter have come to believe that we are "the principal source of instability and injustice in the world." This leads them, according to Moynihan, to attack the "very existence" of American military power. They feel that America is always wrong and assume, therefore, that the other side—the totalitarians and their allies—is right. From this, Moynihan concludes that our problems abroad are due above all to a failure of will here at home—a mistaken notion that we are on "the wrong side of history."

The first troubling thing about this essay is its tone. For example, that tired epithet, "obscene," figures twice in a few pages. Then there are the exaggerated charges. The essay focuses on Carter, but it is also meant to convey a picture of today's liberal Democrats. In fact, virtually no one in mainstream American politics questions the need for an efficient military. No Democrats—even those who oppose the new missiles we are installing in Western Europe—believe that Soviet communism is either more just or more humane than liberal democracy. Nor do you have to like what Sandinistas are doing in Nicaragua to question the policy that has turned Honduras into a base for continuous military maneuvers and an illegal exile army. Moynihan should know, for he himself has questioned much of what we are doing in Central America. Yet he goes on fighting just that kind of straw man—an anti-American bogeyman created, in good neoconservative fashion, from his memories of the 1960s.

Even more unsettling, however, is Moynihan's failure to look beyond the halls of the United Nations. He writes as if our problems with Third World countries were entirely psychological—a matter of our self-doubt and their resentment. This may or may not be true at the U.N., but out in the real world surely there is more at stake. Moynihan is not unaware of the real sources of tension between the United States and the Third World—economic disputes and the other inevitable tensions that divide a great power with a stake in the status quo from small, new countries intent upon change. But he is more interested in the way these issues are used at the U.N. as a "means of diplomatic aggression" and seems largely indifferent to efforts to address them as practical problems.

Nowhere in his lengthy discussion of the U.N.'s ostracism of Israel does he mention events on the ground in the West Bank and Gaza. What's happening there does not justify the U.N.'s hostility to Israel, and it may not be Moynihan's central concern, but it cannot be irrelevant to Carter's position on a resolution condemning Israeli settlements in the territories. Moynihan's answer to Israel's real diplomatic isolation and security problems is to carry the ideological struggle back to those at the U.N. who denounce America and Israel—denounce us, he believes, as symbols of democracy. Of the three, this essay bears the least trace of Moynihan's years in the Senate. He might as well still be at the U.N.—living in that thin atmosphere of symbolic drama and hyperbole.

What about the argument that we are on the wrong side of history? Even Moynihan, in his more considered moments, seems to recognize that the United States is facing new limits to its power abroad. No one can forget Vietnam or Watergate or the hostage crisis. We live in an age of nuclear parity and monstrous budget deficits. Moynihan himself has raised questions about our waning ability to influence what happens in revolutionary Central America. But that is not to say, as he suggests some Democrats do, that we are always wrong or the Soviets are right—or that our ideals are now invalid. The challenge is to find a way to live within those limits without necessarily giving up the idea that America should stand for something in the world.

In this respect Moynihan's third essay is a useful antidote to the second. The principle at stake is the rule of law—the standards of decency and accountability that, in theory at least, have guided international conduct since the days of Moynihan's great hero, Woodrow Wilson. This is not, the essay points out, a good time for lawfulness. The Soviet Union is of course a great offender—intervening in Afghanistan, shooting down the Korean airliner, flouting the standards of the United Nations with Orwellian abandon. Nor does the Third World have a very good record: the seizure of our embassy in Teheran is particularly offensive to Moynihan. But more important, more troubling to him as an American, is Washington's increasing disregard for these

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crucial peace-keeping standards. The theme—the warning—at the heart of the third essay concerns "the Sovietization of American foreign and military policies."

Jimmy Carter comes in for a fair share of criticism, but Moynihan reserves a special sense of outrage for the way the Reagan administration has borrowed Soviet tactics for its assault on communism. Specifically, Moynihan strongly opposes the intervention in Grenada and the implication that we have a "right" to destabilize Nicaragua. The tone of the essay is incredulous and dismayed: What after all are we fighting for, if indeed we are no better than the Soviets—if we don't stand for some kind of decency and liberal values? Here, then, Moynihan turns his ideology to account, using it not as a blunt, predictable weapon but rather as a challenging standard, both for us and for the rest of the world.

What are the lawful instruments available to an American president? Personal pique of the kind Jimmy Carter showed after the invasion of Afghanistan, belligerent rhetoric, hasty military strikes—all are unacceptable to Moynihan. He is looking for a "proportionate response," a safe instrument—something "between doing nothing, or next to nothing, and blowing up the world." This is his sharpest criticism of the neoconservatives—of their dire warnings that America has lost the will to assert itself with the use of force—and it is characteristically funny as well as telling: "Freud is said to have remarked that the first man who cursed an enemy rather than striking him was the founder of civilization."

As for cursing the enemy, Moynihan has hardly abandoned the righteous confrontational style he practiced at the U.N. Yet, he emphasizes that in the pursuit of law, the United States must not appear vindictive. We must not get down into the gutter with the Soviets but should stand above the fray, bearing the standard of objectivity and law. That sits somewhat uneasily with his own rhetoric and combativeness—evidence of his incomplete divorce from the neoconservatives. He feels that America needs to find a safer, shrewder way to assert itself, but it does not seem to occur to him that we might better defend our values if we did so quietly and confidently and did not always lord our virtue over the countries we seek to influence.

The procedure he recommends is somewhat cumbersome: We should take issues like the seizure of the Falklands and the Teheran embassy to an international court, and then, if we must, follow up its decision with economic measures or legally sanctioned force, ideally in concert with other nations. It could all be a fussy way to justify the same old gunboat diplomacy. But Moynihan sees it as more than a legal process; it is a way for Americans to protect themselves from the idea that might is right. We should be known to favor restraint and the peaceful resolution of conflicts. Rather than invade Grenada, we should have been talking to Havana, doing what we could to separate Fidel from his Soviet sponsors.

Will it work in a world of ruthless men like Idi Amin and Josef Stalin and kamikaze Moslem terrorists? Moynihan's answer is not entirely persuasive, but it is a strong testimony to his idealism. He simply believes that the rule of law can triumph—and points out that it is in our "interest" to make sure that it does. This is also a shrewd answer. A code of decency and fairness is not a foolproof weapon, but it may well be our most effective one.

Does ideology matter? Of course it does. To what extent should it figure in calculations of American foreign policy? If asked directly, Moynihan would give it a leading role—and would defend that role to the last polemical phrase. What is wise and intriguing about this book is the way that reality is creeping into his thinking. ■

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POLITICAL BOOKNOTES

Aftermath: A Soldier's Return From Vietnam. Frederick C. Downs Jr. *Norton, $12.95.* This is a sequel to *The Killing Zone*, Downs's 1978 account of the perils of fighting and dying in the Vietnam war, which has become a classic of wartime narrative. Just one year after young Lieutenant Frederick Downs loses his arm and the full use of his legs to a landmine in a Vietnamese jungle, he realizes that the American people do not love him for his sacrifices. His sad epiphany comes as he is having his wedding photograph taken by a crusty WWII vet who cross-examines him on the number of women and children he has tortured and killed.

Aftermath is a sensitively chronicled diary that details Downs's struggle to survive in the terrifying limbo of a VA hospital. It ends with his bittersweet return to Indiana, a normal place that is for him now robbed of normality.

—Mairi N. Morrison

The American Disease. George C. Lodge. *Knopf, $18.95.* Lodge, a professor at Harvard Business School, is strong on diagnosis of the disease in the American economic system, but weak on his recommendations for treatment. The book is another call for a national industrial policy, but it reads more like a shopping list of failures and successes than an economic analysis.

The themes of Lodge's book are familiar to *Monthly* readers: government, business, and labor must cooperate for America to regain its competitive edge, politicians have resigned themselves to the whims of overly powerful special interests that undercut or stifle the national interest, and the country needs a return to a sense of community and national purpose. Good stuff. Unfortunately, that's about as far as Lodge takes it.

In the final chapter, Lodge does provide his point-by-point plan for change, including such ideas as increasing the power of the U.S. Trade Representative. Unfortunately, the plan ignores the most significant symptoms that Lodge described, such as the adversarial nature of American society, the country's lack of leadership, and the gridlocked policies caused by the politics of special interests.

—Kurt Eichenwald

Essays in Contemporary Economic Problems, 1983-1984 Edition: Disinflation. William Fellner, ed. *American Enterprise Institute.* This is a collection of ten essays on the costs and consequences of the Reagan administration's efforts to reduce inflation. Published by a conservative Washington, D.C., think-tank, the essays decisively reject the claims of supply-siders and other right-wing romantics that inflation can be reduced without the pain of unemployment, bankruptcies, and the like.

The AEI view is pragmatic and pessimistic. Markets aren't perfect, and the "invisible hand" won't cure everything. But traditional Keynesian policies that try to keep people working by jacking up inflation are not effective enough to justify their costs. The AEI counsels the opposite approach: When the economy slows down, sit tight. Keeping prices stable is more important than keeping people working. Marxists might refer to this as the "reserve army of unemployed" approach to inflation control.

There is indeed increasing agreement that Keynesians have been too cavalier about inflation, but this does not mean the the AEI folks are right. Their favored policies—shifting the tax burden from the owners of capital to consumers, and a higher toleration of unemployment—are harshest on those at the bottom. The challenge to liberals is to come up with something better.

—Jamie Love

The Feminist Challenge. David Bouchier. *Schocken Press, $12.95.* Bouchier asks a compelling question: how can modern feminism recapture the spirit and commitment of the 1960s before it expires as a "form of politics which has been outdated by events." This carefully crafted analysis of the feminist movement in Britain and the U.S. drives home the point that the movement has evolved into a centralized, sometimes dogmatic interest group, indistinguishable in most respects from any other interest groups.

The hope for feminism, as Bouchier sees it, is a renaissance of the small consciousness-raising groups (the feminist version of de Tocqueville's town meeting). "As a cause," he says, "women's liberation is as deep, as wide, and as fundamental to human progress as the labor movement ever was." Women *do* have common interests, but they are not necessarily abortion, day care, or comparable worth. After all, as Bouchier points out, the most revolutionary impact of the movement in the sixties was nonlegislative; people were compelled to view women differently simply because a great number of women insisted that it be so.

—Kay L. Gunderson

Growing Minds: On Becoming a Teacher. Herbert Kohl. *Harper & Row, $13.95.* When one of Kohl's sixth-grade students asked him what a number really was, Kohl remembered how a college professor had explained John von Neuman's derivation of natural numbers. Then he spent the night adapting that explanation for his sixth-graders. He constructed a set of boxes inside boxes. The last box, the empty one, was zero.

Kohl's creativity in the classroom was not always appreciated. As a student teacher, he was given the boot from a New York public school for deviating from the rules. After trying a private school, however, Kohl became disenchanted with it as well. He returned to the public schools, stifling bureaucracy and all.

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Kohl does not belabor the enemy. He dwells instead on the classroom, where sparks can still ignite when a teacher, in Kohl's words, helps his students "use [their] strengths to meet their own needs." It is heartening to know that small islands of such humanity and commitment can still exist, despite the determined efforts of our public schools to stamp them out.

—Lynne Randolph

The Inner Circle: Large Corporations and the Rise of Business Political Activity in the U.S. and the U.K. Michael Useem. *Oxford University Press, $12.95.* Useem argues that in recent years an "inner circle" of corporate bigwigs has developed in the U.S. and Great Britain. Inner circle members are easily recognizable: They generally sit on several corporate boards, are of "upper-class" backgrounds, and attended St. Grottlesex. The inner circle, says the author, arose in response to adversity such as government regulation in the U.S. and the "labor challenge" in England, and is responsible for a "rising corporate activism," which among other things helped elect Ronald Reagan and Margaret Thatcher. Useem offers interesting statistics and useful cocktail-party facts, but the grand theory of the "inner circle" simply isn't the revelation you're led to believe it will be.

—Nicholas Goldberg

The Man in the Gray Flannel Suit II. Sloan Wilson. *Arbor House, $16.95.* The original *Man in the Gray Flannel Suit* was one of those novels that achieves fame more as sociology than as art. Its suburban hero, Tom Rath, became the emblem of the burned-out World War II veteran-turned-corporate soldier. In fact, it was the title more than the character that caught the imagination of the fifties, and today one reads the original feeling that its virtue is as a snapshot of one moment in American life without being so compelled by the characters as to wonder what will become of them.

But this is the age of the sequel, so now we have *The Man in the Gray Flannel Suit II*, which takes Tom Rath through service in the last month of the Kennedy administration, an affair, and a divorce. What Sloan Wilson wants to talk about this time around is the gentle collapse of the mighty fortress that was Tom Rath's world in the fifties—Fairfield County, Rockefeller Center, and all that they implied. Now people don't conform anymore, kids take drugs, sex is fun, self-employment is preferable to big-organization employment. In other words, it's a neoconservative's nightmare. But for Tom, who when he bought the program bought it out of fear and not belief, the culture's growing acceptance of its fallibility is mostly a blessing. By the end, he's sinking into a mellow, bittersweet old age in Florida, his wife running exercise classes in the living room.

Wilson is a novelist of no great gifts, plainspoken without being eloquent. John Updike can make station-wagon adultery and too many martinis seem like the stuff of literature; Wilson, alas, presents them as they actually must be, mundane and desolate. As for the possibility of his capturing the national mood again, it seems unlikely because his timing is off. The novel takes place in 1963 but its mood is closer to 1970—was anybody in the early sixties using the phrase, "midlife crisis," as one character does here?—and by 1984 the country has played out the theme of self-expression and moved on to other obsessions.

—Nicholas Lemann

The Medical-Industrial Complex. Stanley Wohl. *Harmony Books, $14.95.* Wohl, a doctor at Stanford Medical Center, examines America's new, for-profit health-care chains of hospitals, nursing homes, and "free-standing ambulatory-care centers" and finds that their record so far is one of rampant overutilization, overcharging, wild profits, and mediocre care. Yet Wohl remains convinced that the medical-industrial complex must be an "integral part" of any future cost-effective health-care system. Why the reader should share his conviction is not explained. Critics of the medical establishment may find equally

It should happen here...

In this essential sourcebook for anyone seeking new political solutions that transcend left-vs-right "politics as usual," Fritjof Capra (*The Tao of Physics*) and Charlene Spretnak investigate the Greens, Germany's famed anti-party party, applying Green principles to American politics and exploring concrete ways to organize a Green political movement in the U.S.

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dissatisfying Dr. Wohl's insistence that although "many doctors do earn a large sum of money... this has absolutely nothing to do with the nation's high medical bills." Wohl does, however, provide a revealing look at the financial umbilical cord between for-profit medical chains—like Humana Inc. and Hospital Corporation of America—and medical supply giants such as Upjohn and Johnson & Johnson. The book is worth reading for this anatomy lesson alone.

—Paul D. Glastris

The Politics of Waste Management. James P. Lester, Ann O'M. Bowman, eds. *Duke University, $8.95.* Although dreadfully academic at times, the text contains sustained, well-documented studies of the key issues in the field: from the bureaucratic art of citing needed, though controversial, toxic waste destruction facilities, to the role of the public in keeping the EPA vigilant. Of particular use, both to incumbents seeking real-world solutions and to the public longing to appease its dread of this growing problem, are the concluding chapters, which compare regulatory approaches and highlight the ones that work.

—Bruce Piasecki

The Money Bazaars: Understanding the Banking Revolution Around Us. Martin Mayer. *E.P. Dutton, $17.95.* In Europe there was the Hundred Years War: in Congress there is the interminable struggle between brokers, bankers, and insurers. Generations of lobbyists have squabbled over how much each of these industries should be allowed into the other's business, and Congress is actively considering the question again now.

Mayer examines these machinations intelligently and engagingly, with a special focus on the computer and communications advances that are breaking down the barriers between the industries. Particularly timely is Mayer's analysis of the ongoing international debt crisis, and the Alice-in-Wonderland accounting that allows banks to book profits on loans they make to help debtors pay back overdue interest on previous loans.

For most readers, Mayer's extended discussion of how technology is changing the way banks move money around—"the plumbing of the banking system," as one Fed official calls it—will be parchingly dull. It looms like a vast desert between the fertile economic and political analysis that opens and closes the book.

—Ronald Brownstein

Ronald Reagan: The Politics of Symbolism. Robert Dallek. *Harvard University Press, $14.95.* Dallek presents a fine chronology of Reagan's policy victories and defeats, from his governorship to 1983, but when he offers a psychological explanation for Reagan's choice of issues (son of an alcoholic, he developed a "horror of being in a helpless condition, beholden to someone else for survival"), he is both unconvincing and distracting. Whose childhood *didn't* contribute to adult values? More important, so what?

—Elizabeth Leiman

Warday. Whitely Strieber, James Kunetka. *Holt, Rinehart, and Winston, $15.95.* For those of us who watched "The Day After" and wondered what possibly could have happened in the ensuing years, *Warday* covers it. Five years after a Soviet-American nuclear exchange, Strieber and Kunetka (as themselves) take a fictional tour of a transformed United States to report on the state of the union. They find that America has become a groping Third World country while the new superpowers, Japan and Britain, hold the reins. The dollar is practically worthless, New York is a city of wild dogs and salvagers, euthanasia is fully accepted (even by the Catholic Church) and commonly practiced on victims of radiation poisoning, and mysterious contagious diseases have reduced the population by nearly half. California, unaffected by fallout, develops a xenophobia so strong its border patrols shoot "illegal American immigrants" on sight. Hispanics have annexed a part of Texas to form their own country. And Washington, D.C., has melted into the ocean.

—Susanne Pari

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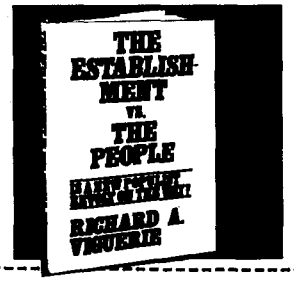

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